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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 281

**WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,**

vs.

**CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.**

No. 282

**WEIGHTSTILL WOODS, COURT TRUSTEE,
PETITIONER,**

vs.

**CITY NATIONAL BANK AND TRUST CO., OF
CHICAGO, ET AL.**

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED JULY 25, 1940.

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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

IN THE MATTER OF GRANADA APARTMENTS, INC.,
A CORPORATION, DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,
Petitioners,

vs.

ITY NATIONAL BANK & TRUST COMPANY OF
CHICAGO, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

Nos. **6986** and **7060**

IN THE MATTER OF GRANADA APARTMENTS, INC.,
A CORPORATION, DEBTOR.

CITY NATIONAL BANK & TRUST COMPANY OF
CHICAGO, ETC., ET AL.,

Appellants,

vs.

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,

Appellees.

Counsel for Appellants:

MR. VINCENT O'BRIEN,
MR. JOHN MERRILL BAKER,
MR. TRACY WILSON BUCKINGHAM.

Counsel for Appellees:

MR. WEIGHTSTILL WOODS.

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WILLIAM J. MURPHY called as a witness testified as follows:

Direct Examination by Mr. O'Brien.

I live at 4521 North Rockwell and am in the furniture business with Chicago Seating Company and I have been with them since 1929. Its business is hotel contractors and institutional contractors. I am President of the company. Its business is furnishing and equipping hotels and institutions, and that was its business in 1933.

I heard Mr. Young's testimony this morning and assisted and collaborated with Mr. Young in making the inventory and appraisal which he mentioned. Mr. Young and Mr. Parker and the housekeeper of the Arlington and of the Granada and myself went through the Granada Apartments. We made an inventory of all items of personal property in the premises other than tenant-owned property. We then furnished a report to Mr. Edward Hall signed by me and by Mr. Young jointly. The report is City National Exhibit A-3 for identification. The appraisal as set forth in the report is on the basis which Mr. Young testified.

Thereupon Mr. O'Brien offered City National Exhibit A-3 for identification in evidence to which the court Trustee objected on the ground that it was the wrong measure of damages and the objection was sustained.

ARNOLD M. JOHNSON called as a witness, was sworn and testified as follows:

Direct Examination by Mr. O'Brien.

I live at 8124 Ingleside avenue, Chicago, Illinois, and am employed in the Reorganization Division of the Trust Department of the City National Bank and Trust Company of Chicago. I was formerly with Central Republic Trust Company from October, 1931 down to the time of its closing.

In the Reorganization Division I am Secretary of the various bondholders' committees for the issues underwritten by Central Republic Bank and Trust

Company and predecessor institutions. That includes the Granada issue. The Granada issue first came to the attention of my division about March, 1932. They had defaulted in principal and interest on March 1, 1932. Practice in respect of defaulted issues underwritten in whole or in part by any of the predecessor banks was to make a very complete investigation of the situation in respect to the property and the default and then consideration was given to what should be done and the possibility of having formed a committee. A committee consisting of C. S. Tuttle, W. G. Sturm, Lewis Riddle, and E. S. Clark was formed in the Granada case. Mr. Clark later went in business in California and Mr. E. A. Kilmer of Elkhart, Indiana took his place, and Mr. Albert Peterson was also added as a member of the committee so that there are now five members. The committee was set up in April, 1933. This matter first came to my personal attention within a few months after I came into the bank in the beginning of 1932. A letter asking for deposit of bonds was sent out I believe about May, 1933.

In order to get facts, we had the property examined carefully by an appraiser and a very complete report made as to the condition of the building and the possibilities of the property from an earnings standpoint. We made a check of the tax situation, figuring the taxes, penalties, interest, and costs, investigated the loan itself—that is, the default and the mortgage and its term and provisions, examined the indenture, and did all the usual work which you would go through to attempt reorganization on a defaulted bond issue.

There were a large number of issues underwritten by Central Republic Bank and Trust Company and its predecessor institutions and in 1931, consideration was given to the best method of handling them. It was not thought that it would amount to quite as much work as it eventually did and along about the end of 1931 a number of people were employed in what we call the "Reorganization Division." I was one of those individuals. During the first six months of 1932, the department was expanded considerably as there were quite a few defaulted issues and conditions were not improving. The reorganization division has varied in size of personnel, but it is about as follows: There were as many as five men handling reor-

ganizations and each man would be assigned a number of loans and it would be his duty to make a very careful examination of all the facts as to the property and the default and he would follow through from a reorganization standpoint to make recommendations to the committee and put things in a concrete form and to make recommendations as to a plan of action or a plan of reorganization. I was in charge of those men.

We had to have what we called a "Customer Contact Department" because of large numbers of bondholders coming in and asking about issues—mostly issues that were already in default. We had two men who for some time did nothing but handle correspondence, mail was so heavy with inquiries. We had two men and for a time three men who did nothing but talk to bondholders who came in and gave them as much information as they could as to the default and the circumstances surrounding the default, the taxes, the earnings of the property, and what we expected to do. We had a personnel of either two or three men in the Legal Division whose work is to check the various papers and be a contact point between the various lawyers used in the cases. A number of law firms necessarily had to be used because there was such a large number of issues and they would advise those reorganization men and answer questions that the bondholders might ask specifically and which the reorganization men could not answer.

We had, of course, Mr. Tuttle and Mr. Sturm who were in a full-time executive capacity in the Reorganization Division and whose advice could be had at any time by the reorganization men or anyone in the department.

The decision on a policy or plan would be made by the entire committee. Mr. Tuttle did not have anything to do with it alone but as a committee man he did.

By "Mr. Tuttle as an executive" I mean of the reorganization committee itself to help the men out. He was an older man with a vast amount of real estate experience and the men all felt that he could give them advice on real estate problems. In addition the bank made its entire facilities available to the division and we did not have to maintain separate departments as for instance, the auditing division and the files—there was a tremendous amount of filing work—and the general bookkeeping, messenger

service, and so on. Counting the secretaries, stenographers, and typists, the average would be from 25 to 30 employees, not including the general services of the bank, like auditing. When the Granada matter came to my attention, we checked to see that the income was sequestered. We found on investigation that a partial bill of foreclosure on a second mortgage had been filed in, I believe, 1930, with Chicago Title and Trust Company acting as receiver. The set-up under the receivership was a little different than ordinary. We found that a Mr. Hall was checking the property for the Chicago Title and Trust Company and was most familiar with its operations and that 908 the court orders provided for the income to be deposited with the Chicago Title and Trust Company as receiver. When we checked this condition in March and April, 1932, our most immediate concern was that it involved a second mortgage and that the income would not be sequestered and used on a second mortgage or any other mortgage that would not be beneficial to the first mortgage. We were informed at that time by counsel that the Trustee was a party to the foreclosure action in such a way that no income could be disposed of except that it would be used for the benefit of the first mortgage bondholders—that is, it might be paid on taxes or insurance or spent on the property. It would have to eventually go to the bondholders, probably to the Trustee under the first mortgage.

That condition of that receivership continued until a complete foreclosure was filed. I believe that was after the middle of 1933 and the receivership, as I understand it, was extended to the first mortgage, but the arrangement for the income and the deposit of receipts with the Chicago Title and Trust Company continued and Chicago Title and Trust Company was really not active in the management until a later date. The court order had not provided for any direct management and it was until, I guess, the end of 1933 that Chicago Title and Trust Company was an 909 active receiver—that is, managed the property. That was about November or December, 1933 when the Cody Trust Company went into receivership and I remember there was considerable upheaval in trying to find out just where things did stand because the Cody Trust Company had sold about 50% of the bonds and was representing the most bondholders.

Chicago Title and Trust Company were active in the receivership and managing the property until about March

of 1934 and about that time we had numerous conferences as to the possibility of the Trustee taking possession and finally a court order was entered because all parties agreed on a Trustee in possession and then Central Republic did take possession. That was about March or it might have been April, 1934, and Mr. Gordon Bonner was assigned to the Granada by me. He is no longer with our organization, but left some time ago. A check-up was made of the title situation so that data could be assembled for the proposal of a plan. We obtained complete information on the property and Mr. Bonner tried to follow through all the junior interests at the time and it seemed that the principal problem was in the second mortgage and in the preferred stock that was outstanding. The common stock we were always led to believe could be brought into some plan of reorganization but the second mortgage in the amount of \$350,000, I believe, was scattered and 910 pledged at different banks and the preferred stock was scattered and it was probably one of the most complicated junior title situations, if not the most complicated, that we had out of some 400 issues. The title situation during that period was about the same that it appears to be in this proceeding. It remained the same right on through for a number of years. I would say every six months something would come to a head and we would feel that we were getting close to getting the junior interests lined up. Ordinarily, it was Elof Wenstrand who spoke for the junior interests. He is the party who the court finally determined here was not entitled to the stuff on deposit with Fred Rathje.

Wendstrand was acting for a syndicate that was endeavoring to work out a deal with the Granada and we knew it was for the Arlington and the Lincoln Park Manor besides the Granada. Our information was that Wenstrand's group also controlled the title to the Manor and also the furniture. Prior to enactment of 77B, if the issue was a smaller one, say anything up to \$100,000 or \$150,000, there was frequently the possibility of working out an extension if the property was in good condition and the owner could put up some money.

In this type, we had to resort to a foreclosure—either complete or what we called foreclosure with an agreed plan of reorganization. By complete foreclosure I mean 911 that if we could not obtain the cooperation of all the junior interests so that the title was controlled for the

purposes of making a redemption from the foreclosure sale, we would have to put out a complete foreclosure plan, which was nothing more or less than getting as many bonds on deposit as we could and in making a bid at the foreclosure sale of the approximate value of the property and going through the redemption period of fifteen months and acquiring title at the end of the redemption period.

We considered a full foreclosure plan of reorganization in this case, but never carried it out because there was outstanding altogether about a half million dollars of unsubordinated first mortgage bonds and 60% of the bonds were sold by the Cody Trust Company and about 40% by the Chicago Trust Company. The bondholders were scattered and we were never able to secure a high deposit of bonds. We reviewed the lists of bondholders time and again and did everything we could through Cody Trust Company to try to get all bonds deposited and it is one of the few cases where we have been unable to get deposits in excess of 90%. Our deposits averaged 95 to 100%. At the time of the confirmation of the plan here, there was less than 2/3 of the bonds on deposit—about 60%, I think, many coming from nondepositing bondholders. In this case it was absolutely impossible to finance a foreclosure sale with that deposit of bonds because of the tax situation and furniture situation. If we had to make a bid at a foreclosure sale on an appraised value of the property, we would have had to raise cash for about \$200,000 of first mortgage bonds in order to bid them out at a foreclosure sale.

The other mode—the agreed plan of reorganization—was dependent upon the consent of all of the junior interests. At the time of the execution of such a reorganization agreement we had the reorganization agreements and contracts signed and everything pertaining to the junior interests in the title has to be put up in escrow with the agreement signed by the junior interests and the bondholders' committee. I tried to get the junior interests for the purpose of such an agreement on innumerable occasions but were never able to get all of them in. We even went so far as to consider forgetting the preferred stock and common stock and trying to get in all of the second mortgage interests on the theory that we could make redemption even controlling the second mortgage, but we could not even get that.

Consideration was given to a bid by the Trustee for the

benefit of all the bondholders. All the committees started talking about the Trustee bidding at the foreclosure sale for the benefit of all of the bondholders and we thought, of course, we had the solution to a lot of our problems because the major difficulty was bidding out non-depositors and we took up and discussed it carefully. We had counsel in and had numerous discussions and even went so far that in some manner the foreclosure bill was amended to provide for the Trustee to bid at the foreclosure sale because after we consulted our attorneys we were told that that would be the next step to take to place us in a position for the Trustee to bid. There was an opinion by the Appellate Court of the First District on that subject at about that time. The Straus case. Then a decision was made by the Supreme Court which I always understood did provide that the Trustee under a mortgage deed has the right to bid at a foreclosure sale if the trust indenture has specific powers on that point. But in our case, the indenture did not have specific authority in the trust deed to bid and as a result of that decision we were thrown out of the possibility of considering having the Trustee bid at the sale. So we were right back where we started from as far as the reorganization plan was concerned. About the end of 1936, there was activity in connection with the lining up of these junior interests and Mr. Wenstrand and his group was actively negotiating for an agreed plan of reorganization. There were quite a few people in at the time because there were a number of groups interested. There was Fred Rathje, Frank Rathje, and the heirs to the Ingersoll interest, Eloy Wenstrand and William Lodwick. Mr. Lodwick was a lawyer. He was working with Vernon Loucks on behalf of the Ingersoll heirs. Mr. Wenstrand was buzzing around this picture ever since we were in the situation. He was never able to get financing to carry out the schemes for getting these properties until he got this Mr. Ingersoll, an older man, to finance him. It seems they went ahead and picked up various junior interests—some of the second mortgage and preferred stock—and they got all of the common stock, as we always understood. About the time that they had things pretty well gathered together, Mr. Ingersoll died and that brought into the picture the heirs of the Ingersoll Estate whom Mr. Loucks represented. Wenstrand had to go out and get assistance because the Ingersoll heirs were not willing to let a lot of money go

out of the Ingersoll Estate into the Granada situation and go further than they were already in it.

In late 1936 it looked to the committee as though Mr. Wenstrand could get these interests lined up for the purpose of a plan. We were finally confident that we were going to get all the junior interests lined up and working on an agreed plan of reorganization.

I recall the old bankruptcy originally instituted at Danville, Illinois, in March, 1935. We gave attention to that at the time. We held meetings and talked about the 915 involuntary petition that had been filed and consulted our attorneys in the case and the question came down to one thing—that is, whether we could get a good title. As a committee we had never proceeded with any reorganization where we could not get title because our outlook in reorganization has been that the ultimate object is to liquidate real estate that is in the Trustee; complete the plan of reorganization and then liquidate that through a sale of the property at the earliest possible time when a good price can be obtained. We had hoped as a matter of fact that we could go ahead on a 77B proceeding, but we were informed by counsel that they had talked to both Mr. Herbert and Mr. Oshe of the Chicago Title and Trust Company and received very definite opinion that unless the Granada Apartments, Inc. came into the 77B proceedings and permitted themselves to be a party to the suit that the 77B proceeding would be invalid, and that we would not get good title. Based on that information, we were, of course, forced to register objections to the 77B proceedings because we did not believe they were good.

Frank Rathje was approached by this group as to the handling of the finances for acquisition of the properties—that is, the Manor, Arlington, and Granada, but we found out that Mr. Rathje was interested in financing the acquisition of the properties only if the three of them were kept together as a unit.

916 They proposed to make a low bid for the bonds and acquire the first mortgage bonds on the three issues and time and again they took it up with the committee, but the prices they always mentioned were ridiculously low and of course, the committee would not consider it. They were not even willing to pay a reasonable price based on an appraisal less depreciation or any other fair method of arriving at a value. By "they" I mean the Wenstrand group. That situation resulted

in special treatment of the Arlington because when in late 1936 it looked as if we were going to work out an agreed plan with the junior interests, we were also very active on the Arlington situation.

The Reconstruction Finance Corporation controlled the title to the junior interests' furniture on the Arlington and we had tentatively agreed with them on an all-stock plan of reorganization. They were to receive 12½% of the stock of a new corporation to be formed for acquisition of the Arlington property in return for both junior interests and furniture. About the end of 1936 when we were dealing with the RFC it constantly appearing that we were not going to get cooperation from the junior interests and that in effect we were probably being stalled along and knowing that Frank Rathje had been interested in financing only if the three properties were kept together, we were afraid that this group would get to the RFC and acquire the junior interests which would mean then that we would be in a delicate situation on the Arlington as well as the Granada. About that time, I went over to the RFC and pressed this matter and Mr. Sturm and myself went over there and talked to the representative of the RFC two or three times. We talked to Fuller Gregson and to Mr. Murcheson, manager of the office. Of course, at that time, we immediately pressed the plan of reorganization of the Arlington and it was in that matter that they had been approached with reference to sale of the junior interests. As a matter of fact, notices were sent out to either three or four different groups interested in the Arlington to buy out the RFC requesting them on or before a certain date to make a bid for the junior interests. That included the RFC's holdings in the Granada of some of the unsubordinated first mortgage bonds and some of the subordinated and some of the second mortgage bonds. These notices went out and bids were actually received in sealed envelopes and opened, I believe, by Mr. Murcheson, representative of the RFC office. It seems there had been talk of a price for the junior interests and the furniture in an amount which was somewhat larger than the highest bid received. Bids were received from three different groups and the RFC rejected all of the bids because they were less than the price that had been talked about and they were also afraid that there might be some collusion between two of the groups as to price and if they held off, they would get a better price.

I remember that you talked to Mr. Gallagher, head of RFC here, at an earlier time. You talked to Mr. Gallagher and Mr. Sturm and myself talked to Mr. Gregson and we had an agreement on this plan of reorganization and we urged them not to close any deal for the sale of the junior interests and explained very frankly to them as to this Granada situation. They agreed to go ahead with the plan of reorganization, so we hurriedly got them to deposit all their securities under the plan and execute the contracts. They got the approval of Washington and once everything was put up in escrow and the contract signed, we had the Arlington plan of reorganization in form and figured we could proceed to consummate it.

That was the last of the Rathje deal except, I believe, that group went to Washington and talked to the RFC down there. I don't think there was anything else that could have been done to get this Granada matter reorganized up to the time it came here. We gave a group reorganization consideration on several occasions. We had surveys made of the properties as a group. We have closed numerous group reorganizations, one, I 919 recall having been before this court. It was the Griswold-Walker Terminal Warehouses which involved four different bond issues. We had also the Central Plaza and Central Plaza Apartments. I believe they were before Judge Woodward. Also the Mira-Mar and New Mira-Mar bond issues which were consolidated. Any time when we had adjoining properties we immediately gave consideration to consolidation of the bond issues as a better method of handling them. We gave it a great deal of consideration in this case, but were never able to work it out for the reasons already discussed and also at the time of the negotiations on the third issue, Lincoln Park Manor, we not only did not have the junior interests but did not have the furniture under control and never were able to line it up.

Cross-Examination by Mr. Rosenstone.

I was 26 years old in 1932. I was first employed by Central Republic in October, 1931 to handle reorganizations. I had no connection with the predecessor institutions. Prior to 1931 I handled reorganizations at Greenebaum Sons Investment Company. I had been working at Greenebaums in reorganization work a couple of years and was with them beginning with the first default on

bond issues and I had charge of the statistical and analytical department of Greenebaum Sons with a department of about fifteen people. I have studied law about a 920 year and a half but I have not passed the bar. I

feel I know as much about junior interests perhaps and titles to junior interests as anybody in real estate. I claim to be an expert in respect to real estate title matters as affecting real estate reorganizations. I am secretary of the committee on the Granada Hotel and for all of the other committees and all of the other reorganizations. I know Marley Halvorsen. He was Assistant Secretary. I kept a record book of all meetings of the committee in respect of Granada and keep a record book of all the other activities of the committee with respect to every reorganization. I did not bring the record book on the Granada committee with me, but it is available.

Until May, 1937 there were innumerable meetings attended by either all or a part of the members of the Granada committee. I don't know how to even estimate the number. Meetings were held upon notice to the members. Two or three of them were right at the bank. I believe Mr. Kilmer attended every meeting after his appointment. I cannot say the number of meetings held after his appointment because innumerable subjects came up for discussion as to the property where we would not send out what you would call a formal committee meeting or record. We did not just sit around the bank and talk about it when we felt like it. By "we" I refer to the

bondholders' committee and the Reorganization Division. The Reorganization Division was a division of the bank. All of the reorganization work with reference to the Granada was not conducted by that branch of the bank. Mr. Tuttle and Mr. Sturm are employed by the bank and are in its Reorganization Department. When I say that we considered various things, I include in "we" the individual members of the bondholders' committee, myself, Mr. G. W. Bonner, Mr. C. G. Campbell, Mr. Vollers, Mr. Peterson, Mr. Sass, Mr. Leonard, Mr. Bickel, Mr. Walter Toon, Mr. George Helffrich. I could name a number of others. These people are in different departments. There would be no purpose in having them all at one meeting. It is not a fact that no one really had any responsibility in regard to this building. We didn't just shift around from one man to another. In regard to this building as to a decision of the Reorganization Division, the responsible head was Mr. W. G. Sturm

who was the officer in charge of the Reorganization Division and he is answerable only to Mr. Arthur T. Leonard, who is the head of the Trust Department. I would say Mr. Leonard is responsible to the Board of Directors and the Chairman and President of the Board of Directors of the bank. The bondholders' protective committee was responsible for the bondholders. I think every action taken by the committee and the Trustee would indicate that every thought was given to the bondholders.

To name one thing that we did in that department 922 for the benefit of the bondholders in the Granada, we followed collection of the income of the property and prevailed on the Trustee to take possession thereof. The Trustee was the City National Bank and Trust Company but I think that you forget that three members of the bondholders' committee were not employed by the bank. That is a majority.

We had used a great deal of effort to get the City National to take possession. I could just illustrate that by showing you where they would not take possession where we were trying to make them take possession. In respect of this building we made up and gave to Mr. Leonard a complete report of the taxes and the appraisal of the property, both by an outside appraiser, survey of the property by our own man, a personal report by Mr. John Bickel, head of the management department, and a personal inspection of the property and an examination of all of the details with respect to the bond issue and the foreclosure to see that all was put before Mr. Leonard before he would consider possession. That was not merely routine stuff because possession of a lot of properties was turned down. It is true we made some inspection of the properties in every case before they were turned down or accepted. The Trustee would not act on it until he had the information. The suggestion 923 that the controlling thing when we took possession or refused to take possession was the question of fees for the Bank acting as Trustee is best answered by the large issues where the Bank was Trustee—the Granada was not the largest—where they would not take possession of properties, although when I was at Greenebaums we tried to get the Bank to take possession of the properties and they would not do it. They never changed their policy in respect to taking possession. Because of the Central Republic Bank and Trust Company being the successor up until the underwriter of these issues, they

felt a very great responsibility as to them. Greenebaums purchased merely the banking business of the Central Trust Company. Greenebaum Sons Investment Company is still operating the mortgage business and the underwriting business. I would not say we had a pretty hard time to get Mr. Leonard to take the Granada property, because from the facts it looked like the logical thing to do, if the thing ever was to be worked through.

To work out a reorganization of the three properties we actually talked to every junior interest and every party in interest of the three properties. By "we" I mean either myself or some member of the Reorganization Division or that Committee. We were a large department, that is admitted, and the responsibility had to be divided. Of the four or five hundred issues handled in my department I have been responsible for the supervision of all of them, and actually personally 924 handled the reorganization and completion, that is to say, the trading deal with the owners, seeing that the terms were drawn up, plan got out and everything on about, I would say, 150 issues. In this case we felt that once we got into 77B, so we get a good title, that we ought to have a reorganization within 90 days. I figured that we would have the property in the hands of the reorganized corporation in not over 90 days. I will have the property into the hands of the reorganized corporation just as soon as the plan is completed. I don't believe the trustees and directors of the new company have been approved and the final order entered. We will get the plan in as soon as our attorneys tell us that our responsibility is ended. I would say that I had more responsibility to follow through and reorganize this property than anybody. Mr. Bonner actually followed the details, looking up the facts, and so on. Bonner was there from about the beginning of 1932 until 1936. He would check with the junior interests, gather all the information together as to defaults and condition of the property, follow the tax situation, everything that involved information so that we could take some action. He worked under me in the Reorganization Division. Before he came to the Bank he was with the Harris Trust Company about nine years, and he was with Greenebaum Sons Investment Company for about two years. He came to us from Greenebaum Sons where he did reorganization work. At Harris Trust he was in the Underwriting Department, a department that would have charge of

reorganizations of companies in difficulty. He is a man now about 40. He is not a lawyer. He had charge of 925 somewhere between 75 and 90 properties. The average indebtedness of those properties would be about \$130,000. The issues ranged all the way from \$20,000 to \$2,000,000. He is the man that kept in touch with reorganization meetings all the time and reported to me. I reported to Mr. Sturm only if we came across something that involved a decision on policy, when we took it up with Mr. Sturm and the Committee. Mr. Bonner is now with the American National Bank. I believe he has charge of the real estate there, liquidating trusts, etc. The man who did the work looking towards reorganization of this property was in my organization. He reported his efforts to me. His salary was about \$4,000 a year. If there was any plan to be drawn up he would draw an outline of the facts. There were four individuals like Mr. Bonner. I came to the Bank sometime before Mr. Bonner and I handled about 40 extensions before he was ever with the Bank. About 400 issues were handled by the committees of which I am the secretary. I imagine we had committees on about 375 of the 400 issues that we handled. Some of the 400 were just completed extensions. Mr. Sturm just supervised everything. He did not have any actual issues assigned to him. There were other persons who like myself reported to Mr. Sturm. There was Mr. Wise, who had about 90 issues. I practically completed probably about 30 of the cases Mr. Wise had. There were four reorganization men. All of the reorganization men were not \$4,000 men. I suppose they would average around from \$3,000 to \$3,400. I have found a lot of \$35 a week reorganization men, and they did not know what they were doing. I think our men were familiar with reorganization work and the financial end of it and knew what to do, and I think they made good records, each of them.

Of the 400 issues in our Division we have actually completed about 275, and we have another 80 that are in the process of completion right now. By that I mean distributing new securities. We have plans of reorganization either completed or mailed and are working on completion of every issue in our organization except about 75. Out of those 75 I would say that 40 or 50 of them are garages and that sort of thing which just can't finance completion

of them. I mean that they are in tax receiverships and very hopeless cases. Most of the cases that were completed were finished, commencing in 1932 on, steadily since that time. When we were seeking to persuade Mr. Leonard that the Trustee ought to take possession of this property we did not tell him that if the Trustee did not take possession the first thing we knew this case would get into the United States District Court and some judge would appoint a trustee. As a matter of fact, when 77B was enacted everyone of our cases were reviewed and every possible case was put in 77B. I remember handling one of the first three reorganizations in 77B. It was the Powhattan case before Judge Woodward, and practically every one of our larger issues were reorganized in 77B. We thought we could complete this reorganization and turn it over to a new corporation in 60 to 90 days.

Met pursuant to recess 2 o'clock P. M., October 11, 1937.

ARNOLD M. JOHNSON:

Recross Examination by Mr. Rosenstone.

I have brought with me the minute book of the Committee. I might explain that this is what we call the 927 excerpt book kept so that all the minutes are consolidated under the Granada. Then, of course, there is a separate record by dates, each meeting run by dates that would be spread out among a number of volumes. I think this is what you want. The meetings there recorded of November 6, 1935, January 8, 1936, May 7, 1937, and May 21, 1937, are all of the formal committee meetings where there was any action requiring minutes. You have there what would be everything where minutes were actually required. The minutes were prepared within 24 hours after the meeting by myself. This is the excerpt book containing full copy of each meeting held where minutes were written up and the signed copies of the minutes are by dates, that is they run straight through in dates. I would have to bring over four books probably, or three books. These are exact copies of the minutes in the record books and I can so testify and certify to them. The Bondholders' Committee of the Granada held other meetings usually attended by a number of the Committee members, sometimes not all, where there were matters to be dis-

cussed, but no formal decision made. I recall such meetings being held. It was not just general discussion around through the office. It was a meeting of the Committee. These four meetings are all of the meetings where there was ever any necessity of having minutes. I mean where there was anything decided. I did not go through those minutes very carefully to refresh my memory. I don't recall whether there was anything in there as to any decision about putting this property into 77B. I know we 928 discussed 77B at one of the meetings. The question of the involuntary petition filed under Section 77B in Danville and the subsequently filed voluntary petition in Chicago, mentioned in the minutes of the meeting of May 7th, was discussed numerous times. I didn't say it was in the minutes, I said it was discussed. I didn't think that important enough to make a record of unless there was a decision or some action taken. We made quite a few decisions in regard to the Granada Hotel. There were a lot of problems from 1930 to 1931 on, that had to be decided. All the decisions in respect to the Granada were not made in these four meetings that were recorded. A board of directors takes a lot of action that they do not have to write up. I didn't make a record whenever the committee made a decision unless it was necessary for Committee action and involved the Committee. Plans of reorganization, for instance, would simply be in contract form and wouldn't necessarily have to be in the Committee minutes. Whether it was necessary to make a record of the decision depended upon what was involved. I wrote down whatever happened at the meeting. No one told me what to write. It is not correct that one reason for not making a very full record of the meetings was that we didn't want to write them down. The officers of the old Central Republic Bank and Trust Company employed the attorneys now representing the City National Bank in this proceeding. The Committee had nothing to do with it. The Central Republic Bank and Trust Company employed the attorneys in the case of Harris against Tuttle, which went to the Supreme Court. The Committee had nothing to do with hiring those lawyers. The Com- 929 mittee took the action to have the Trustee intervene, just why counsel advised that I don't know, but that was the mechanics; it was always as far as we are concerned a matter that we felt it was the duty of the Trustee to object to, and the Committee would cooperate in any way necessary. The Committee was sympathetic to

any action based on counsel's opinion in this case. They are not necessarily sympathetic to any action of the City National Bank as Trustee. There have been cases where there have been differences of opinion. The appeal in the Little case was actually in the name of the Committee. We considered it joint between the Committee and the Trustee and that was the mechanics of handling the appeal. It is not true that if it was necessary for the Committee to act, why it acted, but if it was necessary for the Bank to act, why it acted according to the dictates of somebody in the Bank. The Bank employed the attorneys in this case that went to the Supreme Court. It was talked over with the Committee members. The Committee did not hire the attorneys. It was a case where they were told they could not get a good title, and it was taken up jointly with the Trustee and the Committee. I don't see how you can draw the conclusion that for all practical purposes the Committee and the Bank as Trustee were one and the same person, because three of the Committee members are not even with the Bank. The Committee and the Bank as Trustee are not for all practical purposes one and the same. Mr. Clark, who used to be a member of the Committee, I believe used to be associated with Cody Trust Company. Mr. Riddle was also President of the Cody Trust Company. Mr. Peterson was employed by Cody Trust Company. He was not employed by the City National Bank or the Central Republic. Mr. Peterson was brought into the situation by the Cody Trust Company more or less as a reorganization expert and financial adviser on their defaulted situations. He has a real estate firm, Peterson & Halvorson, handling real estate. Halvorson is my secretary assistant. It is true that the firm of Peterson & Halvorson had an interest in the Cody issues and Mr. Peterson, I believe, is on a number of committees in some manner. I think the entire Committee was simply formed as a matter of getting together between the various parties interested. Mr. Peterson was added to the Committee simply because of his knowledge of reorganization refinancing and his representing the Cody Trust Company from the standpoint of their experience on financial problems. I suppose you would call the Bondholders' Committees at the Bank self-appointed Committees. Somebody has to get together to form a Committee. If you had gone over there and said that you would like to be on the Committee you would probably not have been appointed even if you had been an expert reorgan-

izer. I am generally familiar with trusts under wills and trusts of that nature from having been associated with bank and investment institutions. I have not been employed by the trust department of any trust company outside of the Reorganization Division. I have made quite a study of the relationship that the law imposes upon a trustee towards the beneficiaries under the trust that he represents. It is the duty of the trustee to protect the estate and look after the welfare of the estate for the 931 beneficiaries. I think the record shows that the bondholders as beneficiaries were treated exactly that way. Central Republic Bank and Trust Company refused to take committee business from anybody but their own predecessor institutions. They could have had considerable. The Continental even would not take it, and the First National didn't want to take any outside business. The First National, the Continental and the Central were the three largest banks. The Harris Trust would not even touch it and the Northern Trust would not. Now, that is all the banks. I am very familiar with what has been going on in the last few years with respect to these reorganizations outside of my own institution. In October, 1931, when I went to the Bank my salary was \$300 a month.

Redirect Examination by Mr. O'Brien.

Central Republic Trust was Trustee under practically all of the Greenebaum issues. That included the Knickerbocker Hotel and the Pearson Hotel and various other large properties with issues of \$1,000,000 and more. Central Republic refused to go into possession of those properties. Central Republic Bank and Trust Company and City National Bank and Trust Company of Chicago have both consistently refused to act as Trustee in possession on properties, large and small of any type, with very few exceptions, and the principal exceptions, of course, were the issues underwritten by the Central Republic Bank and Trust Company or the predecessor institutions and in all of the cases, particularly the Greenebaum cases, because they were very large issues, many of them going up to five and six million dollars in a case, the officers of both of those Banks refused to take possession and operate 932 the properties. The principal reason behind taking possession of the issues where the Central Republic Bank and Trust Company and its predecessor institutions were the Trustee, was that all of the bondholders came

into the banks at that time and looked to the banks to do something, and they had to work out the reorganizations and form the committees and work them out, and they felt, of course, they could operate the properties better and at much lower costs than receivership operations, because they would cut out the large receiver's fees and large fees of the attorneys for the receivers, and issues that we had that went into receivers hands quickly proved that, because the fees were away out of line with the low cost of Trustee-in-possession.

IRVING E. BROOKE, being duly sworn, testified:

Direct Examination by Mr. O'Brien.

I have gone over very rapidly Mr. Schott's testimony in which he made reference to my report received in evidence here. As to Mr. Schott saying that the boiler plant which I had figured on was too small, that is possibly one point we could not agree on, but I figured the boiler plant for this building the same as we would for any building of that type. I consider it perfectly adequate. That is the size of boiler we would put in for a job with that heating load and would take care of the hot water for a building of that size and type, based on our experience of years. We had anticipated a submerged type water heater and so figured in our computation. In that type the same heat carries the hot water and steam, both. The water in the heating boiler is circulated through a water heater taking the heat from the boiler water to heat the domestic water supply. I would say that Mr. Schott's estimate that 933 some \$600 additional for fuel bill would be required so as to heat the hot water is very much in error, because our experience of buildings of this type, I would say I know of but one or two cases in several hundred buildings where the cost of heating water is more than 20% of the total fuel bill. No part of that \$600 figure should be added to my computation. That water heating cost was all included in the fuel bill and in the operation of the boiler plant. I am certain the fuel estimated in my fuel bill is sufficient for both purposes. I could not agree with Schott that instead of \$200 for power for operating the refrigerating system the charge should be \$1652, because in a building of this type that would have a refrigerating system

put in simply for the operation of this single building the motors would be too small and the power required to operate the system would be small. I still think that the figure of \$200 for electric current under refrigerating system on the last page of my report is correct. As to Schott's estimate that the electric current in the water supply system costs \$100 additional to what I show, I think my figure of \$125 is ample. Although Schott showed \$140 additional for power on the heating plant over and above the figure I show of \$80, I think the \$80 is sufficient. That is based from our experience on the kilowatt hours per ton of coal burned for stoker operation. Although Schott estimates a reasonable figure for labor and attendants as being \$250, I think the figure I have included of \$50 is ample. That is based on the new Code for janitor services which will go into effect very shortly in connection with the janitors' union, in which a building of this type must have a janitor, whether it has its own plant or not. The cost I have 934 given here for the labor all the way through is based on the fact that you would have to have this janitor in addition to a part at least of the other present help, whether there is a plant in the building or not. My report was criticized that the boiler was too small. Well, I will stake my reputation on the size of that boiler to carry that job and we have done several hundred buildings.

Cross-Examination by Mr. Rosenstone.

My report offered in evidence here is not based entirely upon estimates, that is if I understand your definition of the word "estimates" correctly. I would not say an estimate is a guess, but this report is based on definite prices secured from material men and equipment manufacturers, as far as the equipment is concerned. We did not draw plans and specifications for the installation of this plant and submit the same to material men and contractors for bids. I got no definite bids on any item listed in my report. I got prices on the equipment from manufacturer. I wouldn't say that I didn't know these items because we are doing this work constantly, but as a check we secured prices on equipment that covered in this report. We got no bona fide bids, but I understand that the bank has some. It is very customary for us to make bids on preliminary work and furnish them to our clients, architects or own-

ers. This is not simply a preliminary estimate about what the thing is going to cost. We do not ordinarily make estimates that way. We usually get prices on all of the equipment if it is possible from the manufacturers. That does not include delivery charges, installation charges and every conceivable thing that enters into the construction of a plant. That would only cover the furnishing of equipment. In some places it would cover the furnishing of equipment installed in place. My estimate is based upon using coal. In my estimate I have \$900 as the cost of installing a proper stack in that building. That includes installation in the item just above where it says foundation, stack, boilers, stoker. Foundations has nothing to do with installation costs, that is building the foundations for the equipment. I have said that we had figured that a janitor would have to be employed on this building, whether a plant was installed in the building or not under the new Janitor's Code. That has been worked out by the building managers and the Janitors' Union. That Code provides for the employment of an engineer in addition to the janitor in certain classes of buildings, as I understand it. In the class of buildings as the Granada I think that it is only a janitor. In the Granada I think it means that shortly they will have two operating engineers there. In the Arlington the new Code would require only a janitor, as I understand it, but that the janitor would have to be there whether there was a plant installed or not, and in making our estimate for labor we have only covered the additional labor required. My estimate has no provision for the storage of coal, as coal would be delivered there in comparatively small quantities and would not require any great amount of coal storage. In the original design of the building they would make provision for storage, perhaps. That would be a comparatively small item. It would cost probably fifty or one hundred dollars to put up a partition. That is included in the general installation of building charges. It might come under the head of contingencies.

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936 EDWARD HALL, recalled to the stand, testified:

Direct Examination by Mr. O'Brien.

When I said over a certain period of time I had been doing most of the work at the Granada I had in mind the period from December 1, 1931 to approximately the middle of January, 1934. If I said that that condition persisted up to May of this year I did not intend to so say.

When the arrangement late in 1933 or early in 1934 in respect of the payments of \$600 a month was put in effect, the price paid in the past entered into the negotiations and it was generally understood that the fixing of this new rate would not involve going back over the old accounts with the idea of making any refunds for the Arlington. No credit was taken in the transaction on account of past payments.

Since I was last here on the stand you have spoken to me. That was Saturday morning. It had nothing to do with this subject. It was in reference to finding the contract that we were short of. We did not discuss anything else. I did not talk to you this morning.

Cross-Examination by Mr. Woods.

After looking at court Trustee's Exhibits B-1 to 5 937 (pictures of incinerator) I still maintain that we could have gotten along with this condition the same as we had in the past three or four years with temporary repairs although I also said the other day that we had it in mind to make the repairs if and when the state of the treasury justified it. The thing needed attention from the day I came in there.

Redirect Examination by Mr. O'Brien.

I didn't know except from hearsay that the incinerator had been rebuilt. I wasn't there while the rebuilding was going on.

Thereupon the City National Bank and Trust Company of Chicago, as Trustee, rested its case.

WAIT REYNOLDS LOVELESS, called as a witness on behalf of court Trustee, testified:

Direct Examination by Mr. Rosenstone.

I live at Riverside, Illinois, and am a mechanical engineer and am connected with the Western Electric Company and have been for fifteen years. During that time my particular duties in the engineering field have been designing and construction of power plant equipment, boilers, refrigerating equipment, heating and ventilating equipment. I am not an officer of Western Electric. I am in their engineering department.

938 With reference to installation of power plants and refrigerating plants, my work mainly is the original estimating and designing and installation of new equipment. We have no equipment in apartment buildings or hotels. The work is entirely industrial buildings, manufacturing buildings, with a small part in connection with individual residences. We maintain refrigerating equipment for manufacturing processes, for various drinking water systems and air conditioning systems within industrial plants. I have installed refrigerating systems where they have a central unit for manufacturing or industrial purposes, but not for residential purposes, using brine for circulating systems.

I have seen copies of the reports by Samuel Lewis, Hertzman, Schott, Brooke, and Dauber. I have made an analysis of those reports with reference to the cost of operating the heating plant, the refrigerating plant, and supplying hot and cold water from the installation in the Granada apartment building. I was at the Granada Apartment building about the middle of June of this year at Mr. Woods' request. I was escorted around the basement area which houses the service equipment and examined the equipment with the idea of seeing what units and type of equipment were being discussed. My recollection is that in the boiler room there were two units—
939 one large and one somewhat small, two water tanks with three pumps. There was a vacuum pump in connection with the heating system, another circulating pump in connection with the domestic hot water system, and the refrigerating unit with its appurtenances—condenser and brine tanks. I have made a written report to Mr. Woods

with reference to these reports. Court Trustee's Exhibit AA which bears my signature is that report.

The feature of the Hertzman report of December 23, 1933 which I criticize is the omission of any consideration in his report of the value of the building space which houses the service equipment. No allowances had been made in the report for interest and depreciation upon the value so represented. I estimated that the depreciation should be \$3,861 based on 3% for building and 4½% for equipment. The value of equipment given in all reports is practically the same and I presume that has a definite basis of record. The original cost given in Mr. Lewis' report, Mr. Hertzman's report—all of them used the same figure. I used the figure of 4½% depreciation rate upon service equipment of that character. I estimated the value of the building space occupied by the service equipment to be \$61,920 and used a depreciation rate of 3% for buildings of that character. I am speaking of the space in the building which is occupied by the service equipment located in the building. A large portion of the boiler room is of considerable depth and that is rather expensive construction. It requires retaining walls to resist the earth pressure adjacent.

Objections to the testimony in respect of the building costs and cost of construction by Mr. O'Brien on the ground that it is wholly irrelevant and on the ground that the witness is not qualified were overruled.

Witness continuing:

I graduated from technical college in 1902; out of electrical engineering work until 1916; from 1916 to 1923 was engaged in both electrical and mechanical engineering, and appraisal work, valuation work in this country and foreign countries; from 1923 to the present time I have been in the building construction organization of Western Electric Company. My duties there involved the preparation of estimates, of costs of buildings and their various service equipment. I figured a cubic foot for the erection of a space such as this equipment is now housed in at 72¢ per cubic foot volume. I estimated that a building of that character complete would cost approximately 70¢ per cubic foot. I increased that 70¢ by my estimate of the excess cost of construction of the lower portion or basement area, the excavation, the heavier walls, the heavier floor construction required by reason of the floor

being over a space below rather than resting upon 941 soil, and then I reduced that amount by omissions of allowances for complete finishing which was not required in the basement. By finishing I mean floor surfaces, painting, and higher type of building construction in that part of the building which is to be rented or used for better occupancy than for service equipment. The result was 72¢ a cubic foot. If a space had been provided to house only the service equipment necessary for the use of the Granada Hotel, the volume would have been considerably less. I have made no estimate as to the actual amount. The type of construction required for the boiler room would have been much less expensive because a boiler of a size suitable for the Granada Hotel only would have required a much shallower basement. The existing boiler room goes much deeper into the earth than would have been required had the boiler been smaller to meet the requirements of the Granada Hotel only. That applies to the service equipment—what we term the service generating equipment,—the boilers and the pumps and the refrigerating machinery would have been much smaller and less expensive.

The court hereupon ruled that Mr. O'Brien's objection that it was not shown that the witness was qualified and his objection to the relevancy of the testimony of the cost of the foundation construction may be understood to 942 be interposed to each and every question and to be overruled and the ruling excepted to.

For three years I was in appraisal and valuation business as consulting engineer myself and employed by expert accountants dealing with cases to be presented before the income tax bureau. Also during that past three years I have completed a study of depreciation rates on buildings, service equipment, amounting to gross valuation of about \$19,000,000. This study has been presented to the representatives of the income tax bureau.

With reference to the item of 20% in the Hertzman report within which is consolidated fixed charges, overhead and profit, my practice has been to exclude interest charges from that combination when fixed charges contain depreciation at fixed rates, for the reason that the depreciation is a constant figure yearly and the overhead and profit may vary. There are standard percentages to use in determining depreciation. Of course, they vary according to the character of the equipment, the character of the building, and the use to which it is put.

There is no way of telling from the Hertzman report what, if anything, he allows for profit on those operations to the Granada. In view of the limited market for the service and the possibility of considerable loss to the Granada in the event that it should lose a customer, I would consider that an adequate profit should not be 943 less than 20%. The fixed charges alone which would be applicable to either of the customers in this case are greater than or approximately equal to a 20% profit. The failure of a customer or the loss of a customer would throw that amount of fixed charges into the Granada profit and loss account. The Granada receives no benefit from having the plant located and operated in their building other than any monetary benefit that it might obtain in the nature of profit. I would like to qualify that. There would be a slight advantage to the Granada in combining the services for the three buildings because the labor of operation, the men, the attendants would probably be less expensive for a central plant than for three separate plants, consequently the proportion of that labor allocated or applicable to the Granada would be somewhat less by having a central plant than if the plant were only for the Granada's service. By having the plant in its building Granada has the disadvantage magnified by the increased size of the plant which is also present when any moving machinery or other equipment which might be of a nuisance character is present in any degree. I refer to the noise of the machinery affecting the desirability of the adjacent rental spaces, the apartments or rooms immediately above. There is also the disadvantage 944 vantage in the summertime of the heat emanating from the boiler room where they have a boiler for hot water heating. That room in June when I visited it was very warm—much warmer than other parts of the building.

There are apartments directly above the service rooms. Of my own knowledge, I do not know if the sound from the operation of those plants and the vibration can be noticed and heard in the rooms immediately above.

As to the Dauber report, my opinion is that his total of fixed charges is slightly low. I believe his interest rate of 6 per cent is high. It is higher than I have been accustomed to use. In my practice we used 5 per cent. His depreciation of 3 per cent is quite low for equipment of the character of the service equipment in the Granada. The

study that I made recently which I mentioned during the qualifications covering about \$6,000,000 worth of that kind of machinery showed an average of 4.51 as the depreciation rate over a period of thirty years. I studied the history of replacement of machinery taking its life and determining the depreciation rate which should have been charged to meet that average life.

In the Dauber report I can find no consideration given to that part of the building which houses the service equipment which I consider very important in establishing any rate for service. I could find no item giving any consideration to the reduction in the rental value of the space 945 adjacent to the service equipment room.

To that Mr. O'Brien added the additional objection that there is not any evidence whatever that the space has any rental value.

TRUSTEE'S EXHIBIT AA for identification was received in evidence over Mr. O'Brien's objection.

Cross-Examination by Mr. O'Brien.

I am senior mechanical engineer at Western Electric. That company does not sell any service, hot water, steam or refrigeration, to apartment buildings. It does sell services to offices and warehouses owned by a subsidiary company but not to any third parties other than subsidiaries or my own department. I didn't inspect the properties other than Granada at all. I only saw the service in a small part of the Granada. I found in the basement of the Granada about twelve service units. It is my recollection that there were two boilers. At the time I was making no detailed inspection. It was a cursory trip through the building to see what it looked like. I have never been there since. Whether the Granada had a plant to service only its own building or whether it had the present plant, it still had to have foundation walls to hold the building. The present plant does not fill up the basement of the Granada. There are other basement rooms. There is plenty of room down there even with this plant in.

946 The Schott report did not take into consideration the cost of construction of the foundation and basement space and I criticized that in my report. I differ from Mr. Hertzman, Mr. Dauber, Mr. Schott, Mr. Brooke, and Mr. Samuel—the other engineer. I differ with them

all. I think they have all omitted something. I believe they are all wrong on that point. I consider the useful life of that particular equipment is about twenty-two years. Assuming the useful life is twenty-two years, I would fix the depreciation at $4\frac{1}{2}$ per cent. That is straight-line depreciation—dividing the $4\frac{1}{2}$ per cent into 100 and getting the number of years. That is the accepted method.

Taking the Schott method and having in mind that you are going to set aside a fund that will be capable of purchasing a new plant at the end of the twenty-two year period, I cannot tell from memory what the rate would be but I presume it would be less than $4\frac{1}{2}$ per cent. It would be closer to Dauber's figure of 3 per cent if it is figured on compound interest.

Now supposing that the people who are actually dealing with the plant had a different concept of the term of its useful existence and figured a depreciation and amortization at about 10% a year, it should be written off totally by 1933 and for the purpose of depreciation on Govern-

ment income taxes they would not let you take any
947 further depreciation. A depreciation charge whether

at 3% or at $4\frac{1}{2}$ % in 1934 if the same plant were still being used would have no proper place in the fixed charges. If the plant had been written off completely there should be no further. I don't see that the same thing is true of the interest charge whether at five or at six per cent. If you have your fund set up to replace the plant that fund should bear interest as a matter of bookkeeping. If you charged in your interest as part of the fixed charge, you have to offset it with the interest on the fund which you have accumulated if it can be done. If you can get the interest on the fund. You don't continue to charge interest on it when you have gotten back your principal investment, if you pay off your bonds.

If they got back their original investment in the plant over a period of ten years they would still be charging interest. That is continuous. It is a continuous investment. It is not to be offset with interest on the fund which the purchaser has provided to buy a new plant because that fund has to be spent for replacing its machinery and the investment continues indefinitely. If you are still using the old plant for the full twenty-two years I spoke of but
943 you have charged it off in ten years so that at the end of ten years you have a fund sufficient to buy a new plant at the same price but do not buy a new plant,

whether you continue to charge interest I don't know. You sprung a new one on me.

My experience in appraising has been with knitting mills, dyeing establishments, carpet manufacturing and private residences. I never had but one case of figuring the cost of a hotel. I do not care to tell the court as of my own knowledge what the average construction cost per cubic foot was in 1924 of apartment hotel buildings of this type because I had nothing to do with apartment hotels built in 1924. When I say it is more correct practice to exclude the fixed charges rather than to lump them as Hertzman did, the same goes for the Schott report. I criticize it also in that it includes the interest, depreciation, repairs, maintenance, and profits. Depreciation is an item which is the same year after year. Overhead may vary from year to year and the profits may vary from year to year.

I criticize Mr. Schott for taking 5.7% per annum on \$44,400 odd for repairs and maintenance as a part of the fixed charge. For that class of equipment I would use a lower figure. I did not have in mind that the Granada property had this central plant installed in the basement without any binding agreement with the other two properties to use the service. I didn't know what the facts were on that. I didn't know what actual agreements there may have been between the owners of these different properties themselves. With this exception—I read over a copy of one agreement and did not keep it in mind very much. I don't recall the terms of the agreement. In arriving at my conclusions I took the data in Mr. Lewis' report as regards the cost of service equipment, and either Mr. Lewis' or Mr. Dauber's, or both of them together, regarding the number and quantity of service units. If the Granada were to discontinue servicing the Arlington and the Manor properties, it still would have to provide some labor payroll to operate its own plant but probably not to such a great extent because operating labor of that character need not necessarily apply all of its time to running the service equipment but can be used for other purposes. Some of it apparently is being used for other purposes now judging from the figures I saw in the other reports. All of the reports say that the labor charge of Granada should be prorated or divided over the three properties. I don't know what the contract is. Besides the basement I went through the corridor and into the offices of Granada while I waited for the manager. I do not know

myself whether there are apartments over the boilerroom or not. I asked the question and was told there were. 950 I didn't go into any of the rooms over the boiler room to see if I could detect any noise nor did I go up there to find out if heat emanated from the boiler room. I was not particularly interested at that time in the question or I might have done so. Whether Dauber's method of figuring the depreciation based on the twenty-two year life of the plant was incorrect is a matter of opinion. His method is one way of doing it. I don't know whether it is one accepted way of doing it. I presume it is accepted by the income tax bureau but it is not insisted upon by them.

Redirect Examination by Mr. Rosenstone.

In making an analysis of these various reports I did not favor one against another. They were handed to me with a request to examine them and comment on them. My report shows that. I used the same computation, the same figures, with reference to all of them with this qualification that in certain reports, namely Mr. Dauber's, Mr. Scott's, and Mr. Sam Lewis', most of their figures were accepted as they gave them. Mr. Dauber's report stated that it was based upon average cost and average actual cost. I could not go beyond that. If that was the average annual cost, why, who am I to say it was incorrect? I examined the report to see as to its completeness, whether points had been covered which I felt should be covered 951 and whether proper consideration had been given to the points that were covered.

WILLIAM H. SCHOTT recalled as a witness testified:

Direct Examination by Mr. Rosenstone.

Since I was last here I have seen the Dauber report and have analyzed it in connection with my own. I have made a recapitulation or analysis showing the differences between my report and his. In comparing the two reports, there is such a wide difference that I went through each item to determine where the difference came in. He has estimated the amount of power, for instance, that it would take to operate the plant and then assumed a load factor and on the power end of it he runs over while on the water

he has assumed their theoretical figures as to that phase of it. In other words, he figures 2,250 gallons a day to be the amount of water required as a maximum to handle the condensers from the refrigeration end of it. He only estimates 2,250 gallons of water an hour 15½ hours a day, where it takes as high as 72,000 to 75,000 gallons a day instead of 30,000 or 32,000. In other words, the temperature of the water governs the volume of water you have to put over that condenser to operate it. I have made a tabulation of these differences which I made yesterday. Thereupon the tabulation was received in evidence as COURT TRUSTEE'S EXHIBIT BB.

952

Cross-Examination by Mr. O'Brien.

I don't know of any corrections I care to make on account of any particular errors other than the ones I have already made. Leaving out of consideration all fixed charges and profits my report shows that the total cost to Granada is between \$21,000 and \$22,000. I made up a schedule of all of the charges and I had a total of that, and then in working them out they were all absorbed.

Included in my operating charges is an item of \$1300 for repairs and maintenance whereas for the year 1936 it was \$1000 and something. I covered the years 1935 and 1936. I took the average of those two, and then I made allowance on that end of it in excess of that for what it would ordinarily be, because there had been repairs that had been made—were left over to be done since. I don't know that the average repairs and maintenance were \$600. I didn't go back but two years to get my average.

When I got the operating charge I charged 5.7% per year to provide for that for the future. That item is not counted in on the \$44,400 of the original cost of the equipment. It is in there in the fifteen per cent, just a 953 part of the fifteen per cent to allow for all those items on the cost of the property. What the 5.7% runs to I haven't in mind. I have the fifteen per cent in mind because I consolidated those figures and set forth what made this up. Whatever the figure is, 5.7 times the original installation cost, per year, represents one point of difference between my report and Mr. Dauber's. I charged interest on that installation cost at 5 per cent per annum and Mr. Dauber at six per cent per annum. He has nine as against my fifteen, as his combination. I took the same

line depreciation that Mr. Loveless mentioned in arriving at 4.3 per cent.

I have a charge of two and a half per cent for insurance and taxes which is included in the \$44,400. Dauber has the same charge. Dauber hasn't put in the percentage profits over and above all of that. He has outlined it but he didn't put in his figures. He made a memorandum at the bottom, but didn't put in the figures. He is figuring his on a theoretical cost. That is the largest single item of difference in our respective reports. In the analysis there he is entitled to credit on some items and he is short on others.

I got the figure in the amortization or depreciation on the assumption that the lifetime of the plant is still running. I never found out from any source just how 954 much money had been paid for that purpose by the other two hotels to the Granada and I don't know now.

CLAUDE S. PARKER, recalled as a witness by the Court Trustee:

Direct Examination by Mr. Rosenstone.

There are ten units of rentable space on the first floor of the Granada. Those units are one room, two rooms and three rooms. About seven of them come over the engine room. The others over the boiler room. They are all rented at the present time. Three of them are used for the employees of the hotel. I have been living in one of them for approximately three years. It is right over the compressor in the boiler room. Quite a bit of vibration is noticeable from operation of the machines when the machinery is running. You can hear the noise from the operation of the machinery.

How many hours a day it is running depends on the time of year. During the winter months approximately ten hours a day and during the summer months any where from twenty to twenty-four.

I have been manager of the hotel since May 1, 1932. The total rentable value of those ten units on the first floor is about \$600 a month. We have had difficulty in renting those premises in the past.

955 As a rule I have difficulty in keeping tenants in those apartments. Objections are made by tenants as to the vibration from the compressor.

Cross-Examination by Mr. O'Brien.

Tenants don't favor first floor rooms anyway as a rule. They are not as desirable as the upper floors.

Redirect Examination by Mr. Rosenstone.

If the tenants could not hear any noise or feel vibration from the operation of that machinery it would increase the valuation of those particular apartments from ten to fifteen per cent over the Six Hundred Dollars a month they are worth now.

Recross Examination by Mr. O'Brien.

The present rentable value of those units on the first floor is about Six Hundred Dollars a month. That is figuring in the ten units. The staff occupies three of those units of which I figure the value as about One Hundred Sixty Dollars per month.

Met pursuant to adjournment October 12, 1937.

Present:

Mr. Woods.
Mr. Rosenstone.
Mr. O'Brien.
Mr. Tuohy.

WEIGHTSTILL WOODS, Court Trustee, recalled as a witness in his own behalf:

956 *Direct Examination by Mr. Rosenstone.*

I had a talk with Mr. O'Brien, Mr. Leonard and Mr. Bickel on or about August 27, 1937. I called Mr. O'Brien at his office on the 26th and again on the 27th. I saw Mr. Leonard and Mr. Bickel at the City National Bank on the 27th of August. In my telephone conversation with Mr. O'Brien I told him that I had received the audit and that I wanted those sums which were shown on the foot of the last three columns and I also wanted the \$400, house fund, which had been taken away and was not referred to anywhere in this audit. In my conversation with Mr. Leonard and Mr. Bickel I told them the same

thing. And at that time I had made a little pencil notation at the foot of the audit, which is Court Trustee's Exhibit B here; that pencil notation is still there. It was there when I showed it to Mr. Bickel and Mr. Leonard there at their office. I discussed some other matters with Mr. O'Brien on the 27th but don't recall now what it was.

After I became trustee I learned that the incinerators needed attention and made an examination of them. I spent some time trying to learn whether an economy could be effected by running the hot water through there before it went into the hot water tank. I had some engineers look at it. Their conclusion was that the incinerator was too small to really effect any purpose of using the heat 957 there for warming the cold water before it went into the hot water tank. I then asked the engineer if we could not do the work there in the hotel. He examined it and I talked to him about it. He said that the work inside the incinerator and in the stack was in such small quarters and required such technical skill that he would not dare undertake it himself and that he didn't think we should use anyone from some other type of service. I then asked a brick layer whom I know pretty well—Marion Lawson, who has been a brick layer in Chicago for many years, to examine the situation and give me an estimate what he would do the work for. He was up there, I think two days, and examined the incinerator and the stack; and he came back and reported that he would not undertake the task at all. He said that no one except an experienced stack builder, an arch builder could do the work, and that it was dangerous because of the small quarters, and he would not undertake the work at all—he would not even give me an estimate. He gave me the names of two or three contractors and I got the names of several other contractors, and took some bids. When the bids came in they varied greatly as to the cost, and no two of them were alike as to the extent and nature of the work to be done. I asked Mr. E. R. King, who is a practical boiler room man, who spent a number of years shooting trouble in boiler rooms for a great many buildings, to look at the situation and see what the specifications 958 should be. He took a brick workman who is familiar with stack building and incinerator work, up there and formulated his specifications; and I took new bids on them. I accepted the bid of Russell & Company and had the work done. The room inside the incinerator

is very small. The arches over the doorways of the incinerator and the front well had fallen so that they had to be rebuilt. Only one person could get in there to work, at a time. The material had to go in through the small doors; and the material for the stack had to go down from the upper floors, go through the receptacle doors on each floor, and you had to let down just a small quantity at a time, because only one person could get in the incinerator, and only one person could get in the stack. The whole bottom part of the inside of the stack was crumbling; there were places there you could stick your arm entirely through, back for two or three feet. At the corner of the inner stack it was clear open and you could see clear through to the outer wall. The inner wall of the stack was not fastened to the outer wall; there was an air space in between; and it was necessary to start at the bottom and build up. And you had to support the upper portion as you took down the lower portion. You had to take off one side for a couple of feet and support it and build that up, and then take off the other side for a couple of feet and support it. And the space inside this inner stack was so small that only a small man could get in there. The danger of the thing was very great because if he loosened it too much the whole stack all the way up might fall down on him, and there was no way to do the work other than to start at the bottom and build up. These pictures here, Exhibit Z, show the conditions at the bottom of the stack and at each of the floor levels.

It is now in as good condition as it ever was. The arches have been rebuilt and the inner stack is restored with fine quality of fire brick.

I spoke to Mr. Mitchell, who has been a resident of the hotel for about twelve years with respect to his attitude in using some of the lobby space for public use. He is a responsible business man here in Chicago and has lived the life of the hotel practically from the time of its construction. None of the tenants with whom I talked about putting commercial enterprises in there objected to it. I talked to two tenants. They thought it was desirable.

I discussed the advisability of renting the ball room for a lunch room or tea room with two hotel men who were familiar with that community. I discussed it with two practical tea room people who know the community and I have discussed it with real estate men. From my investigation my opinion is that that space is admirably

suiting for a tea room or similar purposes. I went over the space very carefully on Sunday and I find that there is equipment which has been there since 1928, I believe. There are one hundred folding chairs; there are steel chairs with gold trimmings; there are eighty ball room chairs, those are gold covered; there is a pipe organ and a grand piano; there are thirteen dining tables, which are about 4 by 7 feet, of the fold-away type. There were more than forty card tables of the fold-away type. In the kitchen there was a gas stove with four burners and two ovens and a large sink. There were two large work tables built against the wall for kitchen uses and above and below those work tables there were about twenty feet long spaces for storing foods and pots and pans. There is an outlet in the kitchen to the shafts which ventilate that part of the building, which are connected onto the power motor. In the writing room are the cabinets which are for the library, and several tables, and twelve or fifteen comfortable chairs. And in the solarium there are tables and a number of settees and chairs of wicker type. All of these rooms are well lighted with chandeliers and wall lights.

The equipment in the Directors' room is just office equipment. That also is well lighted. There is a sky light in the directors' room and another sky light in the kitchen area.

961 The copy of "The Topics" which you hand me for June and July, 1937, is the monthly pamphlet, or house organ which has been published jointly by the Granada and the Arlington and, at times, by the Lincoln Park Manor for about twelve years.

That is similar to the previous issues which have been put out. I have looked at all of the volumes of those issues that have been put out and this document is similar in general form to the whole twelve years. Page 2 is a standard page which appears in all of them, and most of the pages in there are similar in make-up to the pages that have appeared in the issues for the whole twelve years.

On Page 7 is a picture of the ballroom, which shows the side next to the lobby, and shows the stage, two doors on the left leading to the lobby, and the door at the extreme right is the door into the kitchen. That is a good representation of its condition as it is today. On page 13 is a list of the churches in that neighborhood. That list has appeared in these issues for twelve years.

(The pamphlet is marked Court Trustee's Exhibit 1 for identification of October 12, 1937.)

I have had correspondence with City National Bank and its officials in regard to the petition which I filed and 962 which is being heard with the other matters in this hearing, with respect to a determination of the charges to be made against the Arlington for services rendered.

The documents attached to the petition are documents which I had to do with.

After the notice was given, which is Court Trustee's Exhibit "A" on June 15, I served an additional notice upon the City National Bank and Trust Company, individually and as Trustee, the Bondholders' Committee for the Arlington, the Bondholders' Committee for the Granada and upon Defrees, Buckingham, Jones & Hoffman, their attorneys.

I delivered that notice personally to Mr. Vincent O'Brien and took his receipt. That is Exhibit 1 attached to the petition. The next Exhibit is a letter addressed to City National Bank and Trust Company, or Mr. Arthur T. Leonard, Trustee, dated July 28, 1937, and was written the afternoon following the discussion I had with Mr. O'Brien and Mr. Leonard and held in Mr. Leonard's office that day. Exhibit 2-B is the letter from Mr. W. G. Sturm, Vice-President of the City National Bank and Trust Company on typewritten stationery, "Arlington, Inc." That was the first time I ever heard of Arlington, Inc.

On account of that letter I immediately called Mr. Sturm and told him that I was unwilling to have a relation- 963 ship to a new corporation as a tenant taking services from the Granada, unless payment were made forthwith; and I told him he would have to send me a thousand dollars if he wanted the service continued in behalf of such a new tenant.

I wrote the letter, Exhibit 2-C, to Mr. Leonard because I had written him on July 28 and the only reply I had received was this letter from Mr. Sturm. That was the 14th of August. On the 16th of August I had a telephone conversation with Mr. O'Brien and Mr. Leonard. Mr. Leonard told me that he would send over the \$1000 and later that day the check came over, together with a letter, which is Exhibit 2-D to the petition. Since then I have requested further payment and no money has been paid.

No one has suggested at any time that the service should be lessened or changed so far as I am concerned.

The Court Trustee's Exhibit 2 of October 12, 1937 for

identification is a letter I received from Mr. Sturm on the 30th of September and I immediately called him and told him that I would not accept \$600 a month and that he would have to pay the \$1000 or I would ask the court to permit me to discontinue the service.

In the last few days I have had some pictures taken of the streets adjacent to the Granada Hotel and pictures 964 of Clark Street, north and south from Arlington Street.

The pictures that you hand me are twelve scenes taken within half a block of the Granada showing the present conditions at the Granada along Clark Street half block from Granada and are correct representations of those streets.

Thereupon, there was introduced in evidence COURT TRUSTEE'S EXHIBIT 1 for identification being "The Topics," and COURT TRUSTEE'S EXHIBIT 2 for identification, being the letter from Arlington, Inc., by W. G. Sturm, dated September 29, 1937. COURT TRUSTEE'S GROUP EXHIBIT 3 being the twelve pictures of the streets near Granada.

Cross-Examination by Mr. O'Brien.

As shown by these photographs there were holes clear through the inner wall to the outer wall of the incinerator and the outer wall was cracked. It was necessary to support it from below as you worked up, you took out a small portion. It was shored up to prevent its falling from above. The shoring was from the bottom as you work up from the ground. There was no shoring above to prevent the upper portion from falling. They took out just small sections about a foot or a foot and a half wide.

The wall didn't fall. They didn't let it fall. They 965 had to take out fragments of brick that were left there and put in new ones. The wall didn't fall down.

There are two large entrances from the ballroom into the lobby. There is a hallway from the kitchen that runs straight back along that west wall of the hotel, and you can go right through the store-room right into the receiving room which leads to the alley; you have immediate access with food through that space—through that hallway, you don't have to enter the main hotel at all. I think the present lighting there is admirable for a tea room. You have wall lights, you have an electric machine there, a rheostat on the stag and you can turn the lights as high or as low as you like. I wouldn't make a bit of change in the lighting.

I don't think I would make any changes at all unless you got a tenant who had a full equipment and wanted to put in their own tables and chairs. In that event I would store the present equipment. I wouldn't change the room itself a bit. It is all clean and in fresh condition and it doesn't need any change. This photograph shows the situation very clearly.

I didn't check to see how the taxing authorities figure this excess public space. I don't know that this excess public space is classed as "balloon space" for the purpose of figuring the tax per cubic foot. I didn't find out from any source what the tax per cubic foot would be if that were usable space.

I didn't know that the so-called "house fund" of \$400.00 is shown in the statement which you gave me covering 966 the period May 1 to May 17, 1937 in the item of \$773.40 on the first page under "Assets, Cash on Deposit in Trustee-in-possession Account." This particular audit (Exhibit "B") has a notation at the foot of it which states that that is a fact.

You gave that to me together with all the other accounts for a couple of years, and they were sent over to my office on the 25th or 26th of August. Mr. Hall brought to me the statement for April which I have. Mr. Hall never brought me any statement for May. I never had any statement for May until I received this document along with the similar monthly audits for about two years on the 26th of August. I told you at that time that I was turning all of these documents over to the Arlington to check and that I was merely talking to you about Court Trustee's Exhibit B. I don't know whether that \$400 is included in the balance shown on this audit for May or not. He put that notation at the end of it but he don't say whether it was there after he closed the balance that he has there or not; he merely states that he put it into that account.

Thereupon, Mr. O'Brien asked Mr. Smith, who prepared the instrument in reference to the \$400 house fund and he stated that the \$773.40 had included the \$400 house fund.

(Mr. Woods presuming.) I didn't know then and I do not know at this moment whether that \$400 is included in the total which he has there in his audit for May. But 967 we have in evidence here duplicates of the City National's sheets and it is purely a matter of looking at those sheets to determine whether the \$400 is included or not.

Barrow Wade & Guthrie didn't make any reference to

that \$400 in this consolidated account; it is not mentioned there anywhere, and there is no way I can tell from that whether it is in or out.

My last demand for \$1000 was made pending the disposition of my petition here which asks the instruction of the court in the premises, but time is passing by and it is my duty to collect for what I sell. I asked the court to determine how much Arlington, Inc. owes and I said the amount was around \$20,000 and I thought I was very lenient when I asked for one thousand on account. I didn't ask for One Thousand Dollars on account in the petition which was set for hearing at the time I made this demand. More money should have been paid pending the court's disposition of the matter because I am furnishing service every day. More money should be paid than was being paid at the time I was appointed because Arlington, Inc. had nothing to do with the property when I was appointed. There was no agreement; the Court has so ruled in the order you prepared and that was entered here July 14, no contract or agreement of services being furnished under the implied agreement in law that the receiver will pay the reasonable value of the service.

968 Thereupon, the Court Trustee rested his case in rebuttal.

969 T. P. SMITH, called as a witness on behalf of City National Bank, being sworn, testified:

Direct Examination by Mr. O'Brien.

I am associated with Barrow, Wade & Guthrie, Auditors. I am a staff member. My Company made monthly audits of the Granada Hotel for City National Bank & Trust Company. Document marked City National's Exhibit 1 for identification of October 12, 1937, was prepared by my Company and includes an account of all funds relating to the Granada as of May 17, 1937 in possession of City National Bank as recorded by the books of the Granada.

The "House fund" of \$400. is included in the general fund of \$773.40. That fund, I believe, is taken from the Hotel and put into the general account along with other Trustee-in-possession funds. I was at the Granada yesterday and examined the books and took off the figures showing the refrigerating and water charges made for the years 1930 to 1936, inclusive, against the Lincoln Park Manor and the Arlington.

Documents marked City National's Exhibits 2, 3 and 4 for identification of October 12, 1937 correctly reflect the charges and revenue for that service during those years according to the books of the Company. There were thereupon offered and received in evidence documents 970 marked CITY NATIONAL'S EXHIBITS 1 TO 4 of October 12, 1937 for identification.

Cross-Examination by Mr. Rosenstone.

City National's Exhibit 1 was prepared by my firm some time in the month of May, I believe. It may have been held over a little in June because Mr. Hubbard asked me to hold it over for a little time. I don't know when it was delivered to the City National.

EDWARD HALL, recalled as a witness on behalf of City National Bank:

Direct Examination by Mr. O'Brien.

I have seen City National's Exhibit 3 purporting to be a copy of Mr. Lewis' report dated August 14, 1929 before and have also seen City National's Exhibit dated January 31, 1934—Supplemental Report. Exhibit 3, the original report, was obtained from Mr. Lewis by Mr. Hiram S. Cody, of the Cody Trust Company, and was sent to the Cody Trust Company.

The information referred to by Mr. Lewis was given to him by Mr. Cody or by the staff at the Hotel. At that time the Granada was making a charge sufficient to include 971 its operating costs, interest, amortization, repairs and maintenance at 15% and a profit of 20%. It continued to make that charge down until January of 1934. It was around then that I saw Mr. Lewis and it was pursuant to that that City National's Exhibit 4 was prepared. I have made a search to locate figures for years prior to 1930 and also for 1930 and 1931.

I found three yearly reports. I am familiar with document marked City National's Exhibit 5 for identification of October 12, 1937, purporting to be a report of December 31, 1929 prepared by Hotel Audit Bureau. I got it from the foreclosure files in your office. That report was made by those auditors for the Granada property. The page marked "Schedule A-3" in the report shows the charges

and revenue for heating, refrigeration and water. "Schedule B-4" is a similar report for the year 1930 made by the same people.

Mr. E. H. Schuck is a Certified Public Accountant, at one time employed by Cody Trust Company and at the time of the making of the report marked City National's Exhibit 6 for identification of October 12, 1937, was an employee of Ritchie Bond & Mortgage Company but doing a little outside auditing. He made that report.

Schedule 1, the 3rd item, headed "Heat, Light, Power and Refrigeration" in report marked City National's 972 Exhibit 7 of October 12, 1937 for identification, shows the data on charges and revenues from heat, light and power for the year 1931.

There were thereupon received in evidence instruments marked EXHIBITS 1 TO 4 for identification, respectively, the first being the audit for the period May 1 to May 17, 1937, the second and third being transcripts of Granada books relating to the charges and credits for heat, refrigeration and water for the years 1930 to 1937 with respect to both the Arlington and Lincoln Park Manor, and Exhibit 4 being the recapitulation sheet relating to Exhibits 2 and 3.

T. P. SMITH was called to the stand:

Redirect Examination by Mr. O'Brien.

I took off a transcript of the operating charges of the Granada and revenue to the Granada for heat, refrigeration and water service to the Arlington Hotel and the Lincoln Park Manor, but not for such service to the Arlington alone.

City National's Exhibit 8 of October 12, 1937 for identification correctly reflects the books for the last five months of 1932 and for all of the years 1933, 1934, 1935 and 1936.

973 Thereupon document marked CITY NATIONAL'S EXHIBIT 8 of October 12, 1937 for identification was received in evidence.

EDWARD HALL, being recalled to the stand was cross-examined by Mr. Rosenstone:

I am certain that the figures in Exhibits 5, 6 and 7 are correct and know so of my own knowledge. I know that the report is true and correct and have checked the figures. I have been there.

I did not make up those reports and was not there when they were made. I was there when that Exhibit by Schuck was taken. As to the other Exhibits I wasn't there but I know the auditors and both of them are certified accountants. I know that they are correct by knowing the auditors and from having been over these books a great deal. I did not check the books to find out if the reports were correct.

Thereupon both sides rested.

Thereupon Mr. Q'Brien moved to strike the testimony of the witness called by Mr. Woods from the City National Bank, and examined under cross-examination under the rule, first on the ground that under that rule Mr. Woods was not entitled to cross-examination and secondly on 974 the ground that that testimony in no way tends to support the objections advanced by the Trustee. Motion was denied, to which ruling the City National Bank, by its counsel, duly excepted.

Mr. O'Brien thereupon moved that all of the testimony be stricken which relates to the improvement and alteration of the so-called excess lobby space on the ground that as a matter of law the Trustee in Possession had no right to improve or remodel that public space or any other part of the building. The motion was denied, to which ruling City National Bank, by its counsel, duly excepted.

Thereupon Mr. O'Brien moved to strike all the testimony relating to the receiver's Certificate of Indebtedness on the ground that it amounts to a collateral attack on the order of the Superior Court, which had jurisdiction of the subject matter and of the parties and on the further ground that the point is res adjudicata. Motion was denied, to which ruling City National Bank, by its counsel, excepted.

Thereupon Mr. O'Brien moved to strike all testimony relating to acts and accounts of a predecessor Trustee on the ground that the liability by the City National Bank and Trust Company of Chicago, as Successor Trustee, runs from January 3, 1935 and afterwards and not for any earlier period. Motion was denied, to which City Na- 975 tional Bank, by its counsel, duly excepted.

Mr. O'Brien thereupon made the same motion on the ground that the account of William L. O'Connell, as Receiver of Central Republic Trust Company, predecessor Trustee, stands approved by order of the Superior Court of Cook County offered in evidence. The motion was denied, to which ruling the City National Bank, by its counsel, excepted.

Mr. O'Brien moved to strike all testimony relating to the acts and account of City National Bank for any period prior to September 30, 1936 on the ground that the account has been stated for a prior period and is res adjudicata. Motion was denied, to which ruling, City National, by its counsel, excepted.

Thereupon the Court directed Mr. Woods to file a brief in 15 days, accompanying it with findings of fact and conclusions of law to which he believed he was entitled. Mr. O'Brien was directed to file brief within 15 days thereafter, and Mr. Woods to file reply brief in 10 days thereafter.

Pursuant to order of Court of October 21, 1937 and by agreement of counsel, Mr. Woods and Mr. O'Brien, the following portions of testimony taken before Special 976 Master Carl R. Chindblom are included in the record and considered as a part of the hearing had in open court.

C. F. BOERGER, called as a witness on behalf of the Bondholders Committee, being duly sworn, testified.

Direct Examination by Mr. O'Brien.

I live at 1526 Thelma Avenue, Chicago, and am in the Depository Division of City National Bank and Trust Company of Chicago, which is a depository for the First Mortgage Bondholders Committee of the Granada. There is presently on deposit a total of \$334,900 par value bonds. I believe the unsubordinated portion of the outstanding bonds is \$485,500. Bonds on deposit consist of 119 bonds of \$100 denomination, 393 bonds of \$500 denomination and 194 bonds of \$100 denomination. Services involve taking these deposits as follows: Bonds are presented for deposit over the counter or through the mail. It involves the examination of the bonds for negotiability and coupons, the name and address of the depositor for the purpose of issuing a certificate, the maintenance of record of that deposi-

tor and the custody of the bond in our vaults, and the delivery of the certificate either by registered mail or over the counter and the treatment and examination of the deposited bonds and records supporting them by the various bank auditors and other examiners. Frequently transfers are made from time to time by the holders who have sold or in other manner disposed of their holdings by reason of succession by legal representations and other issues. We keep a record of those transfers. Out of total of 450 Certificates of Deposit that were issued, 71 represented transfers. The balance of 379 represent original deposits. 20 of those 71 transfers involved examination of legal disposition and other supporting papers.

The further services which the Depositary has to render in order to help carry out the Plan as confirmed include disposition of the deposited bonds, the additional transfers that may be required during the Plan and new securities will have to be delivered to holders of Certificates of Deposit. That will involve custody of the new securities for an undetermined length of time and the cancellation off the records of the depositors of the old certificates.

These bonds have been deposited with us over a period of more than four and one-half years. At the end of the second year there was on deposit with us \$300,000 which gradually increased up until the present total of \$334,900. There will be other details which may arise in the handling of the account, such as arise with certificate holders in the frequent transfers of the new securities that will be necessary by reason of the subsequent transfers of a Certificate of Deposit. That will mean that the Depositary will be obliged to requisition the Agent of the new corporation for such new securities as may be necessary which will be supported by the transfer of certificates. This issue was one in which one of the predecessor Banks participated in the underwriting. We have a special way of figuring the charges in such a case.

I have had experience in the matter of Depositary fees and charges in cases similar to the one presented here. From that experience the fair, usual, reasonable and customary charge made by depositaries in Chicago during the period in question for similar services in like cases would be, in my opinion, \$4,900. In this case, in which one of the predecessor Banks participated in the underwriting, City National does not charge the same rate. Here one of the

predecessor Banks participated in the underwriting.
979 In my opinion, the fair, usual, customary and reasonable charge would amount to approximately \$3,200. The fee charge that I mentioned is the one commonly referred to or established by the so-called "Corporate Fiduciary Schedule."

Cross-Examination by Mr. Woods.

I am not a member of the Committee. Two members of the Committee, Mr. Tuttle and Mr. Sturm, are in our Reorganization Division, which is part of the Trust Department. The Depositary Division of the Bank did the work which I have related. The Committee members did not work in the Depositary Division. They were separate and distinct from the Depositary. The Committee as such could not perform any of the services which I have related as the services of the Depositary.

I believe that the original Deposit Agreement showed that we were appointed the Depositary. In addition, from time to time we were called on by the Committee to perform services.

I do not have any of those written instructions or directions here, but there are such instructions signed by members of the Committee. I don't recall how many such directions I have seen. I recall the original Deposit Agreement, but to be specific as to any one or single direction I would have to see it. I don't recall any. The Bank
980 accepts the appointment as Depositary from the Committee. The City National Bank is named in the Deposit Agreement. We rely on the Deposit Agreement of the Committee for whom we are acting as agent in our duties as Depositary. We have a file containing written instructions about it. Those instructions may have to do with some of the duties of the Depositary, such as waiving certain missing coupons, issuing a Certificate of Deposit to some corporation or some association and a corporate resolution or anything that might have to do with something not ordinarily passed upon by the Depositary without giving its principals' direction.

I don't recall any particular document in this case at the present time. I couldn't say what part of the services were rendered since the filing of this petition in April, 1937 without examining the records as to the volume, etc. Ordinarily the basis of charge is on the volume of activity, the number of bonds, the par value of the bonds deposited, and the

number of certificates issued. I can't say without examining the records as to whether there has been any change since this proceeding was pending in the number of certificates deposited. I don't recall any withdrawals since

April of this year. I recall that new bonds were deposited since April but I was not told the amount. I would say it was relatively small. I would say there has been activity in our duties since this proceeding was started in the sense that bonds have been examined at three different times by examiners coming into the Bank since that time. We paid the salaries of the bank examiners every day they were in the Bank. I can't answer as to whether we expect this Court to pay the State Bank Examiners for examining the records of our institution.

The plan of Reorganization was not made in our Department. I presume it was done by the Committee or by some one at the Bank. As I understand, the Reorganization Division makes up the plans. I would say that it is part of the work done by the Committee. We were not charging for that in our Depositary fee request. I am not familiar with the Committee's petition. We don't include that in our estimate of the charges we are asking for services as Depositary.

I would say that most of the services, the actual duties of the Depositary, were performed prior to April 19, 1937. However, the amount that I mentioned that would be Depositary's fees in this connection also includes the delivery of new securities, which has not been done yet. That involves as much detail in the handling as the original acceptance of the bonds and the issuance of the certificates. I include in my figure such services as may be performed by the Depositary in delivering new securities to holders of Certificates of Deposit, who have deposited under the Plan.

I believe the City National Bank and Trust Company also acted as Trustee in this issue. This petition does not ask for any compensation for those services.

Cross-Examination by the Master.

The work of the Depositary consisted mainly of receiving and recording bonds, issuing in lieu thereof Certificates of Deposit, keeping the bonds and answering inquiries as they came in. Thereafter there would be further services to be performed by the Depositary through the issuance of new securities or the return of the bonds. For those serv-

ices we would ordinarily charge approximately \$4,900, which would be the charge if the bond issue were not one that originated with one of the predecessor Banks of the City National Bank and Trust Company. We are actually asking for \$3,200.

We issued approximately 450 Certificates of Deposit. 706 is the total number of bonds deposited with us. We 983 issued 450 certificates altogether which actually cover the bonds to the extent of 379. Out of 450 certificates 71 represented transfers to certificate holders who did not represent original depositors.

Cross-Examination Resumed by Mr. Woods.

In the work of the City National Bank as Depositary we had available all of the records filed by the City National as Trustee. They were in the same office. I don't know that we ever used them.

Recross Examination by the Master.

The work of the Depositary commenced and proceeded with the bonds which were deposited and for which the Certificates of Deposit were issued. The work of the Depositary did not relate to anything but the bonds and was in connection with the certificates issued for them.

Redirect Examination by Mr. O'Brien.

The records that the Trustee had were not those of the kind that the Depositary keeps.

984 WILLIAM G. STURM called as a witness before the Special Master, testified:

Direct Examination by Mr. O'Brien.

I live in Chicago and have been sworn to testify here and have testified in the general hearings in this case before Judge Barnes. I am a member of the Committee for the protection of the holders of the first mortgage bonds of the issue involved here. I subscribed and executed the petition filed by the Committee here on the question of administrative charges. The items set forth in Exhibit "A"

to that petition were disbursed by the committee for the purpose indicated in the Exhibit.

The Committee had to borrow the money from the City National Bank and Trust Company of Chicago. The Committee has no office space or quarters except the space that it uses in the City National Bank and Trust Company and has used from the time of its organization in April, 1933. It has also used the personnel of the City National Bank and Trust Company under an arrangement with the Committee to reimburse the bank for the proper charges of that service. It was agreed that we would reimburse the bank for the cost of that service as well as it could be determined.

Our method of determining that cost is predicated on the number of people that are employed in the reorganization department, the space it occupies, the facilities that the bank places at the disposal of the committee in the way of regular office services; of telephone, filing services, all of the facilities that would go along with it and which the bank has; credit information for taking care of insurance, to see that it is filed and properly taken care of, other files for all of our records, stenographic help, and many other things I don't recall at this time. Anyhow, it makes all the facilities and personnel available to the committee in order to complete a bond issue of this kind. More particularly that would be set forth in Mr. Johnson's testimony before Judge Barnes.

We had and still have a Granada division. After having given very careful consideration to the question of apportioned cost to a specific issue we decided the only fair and appropriate way to do that was on the basis of the total bonds serviced and an allocation of the cost on that basis to each issue.

On that basis the cost is computed as finally as we can determine it at around 2% on the face of the bonds.

Cross-Examination by the Master.

On the basis of our cost, our fee, and request for fees should be \$10,000 and that is requested. That covers services rendered by the bank to the Committee in the way of space, room space, facilities, personnel, accounting and everything of that sort. It does not include anything for the members of the Committee individually. The members of the Committee individually are not asking,

nor do they receive, any part of the fee requested. Two members of the Committee, Mr. Tuttle and myself, are employed by the bank. The other three are not. We receive no part of this compensation requested, directly or indirectly. We are employees of the City National Bank and Trust Company and receive our salaries as such.

The depositary charge is not included in this fee. The fee of \$10,000, which is requested will go to the City National Bank and Trust Company of Chicago and will be credited in the first instance to the Trust Department. If there are any profits, it will be profits to the City National Bank and Trust Company and that is true of the loss, if there is a loss. I don't know whether the \$10,000 will cover the complete work here.

Cross-Examination by Mr. Woods.

I testified at the hearing before Judge Barnes and heard part of the testimony of other persons there from the City National Bank. I didn't hear all of it. I do not wish to change any of my testimony or any of their testimony which I heard.

I am afraid that I cannot state which of the items, if any, in the Schedule attached to our petition, which totals \$2,285.21, pertain to matters after the filing of this proceeding here on April 19, 1937. The different items 987 are not indicated by date and it may be that none of them were incurred after the filing of the petition in these proceedings. I am not sure, but my impression is that all of these items represent transactions prior to the time that the present matter came into court. I would have to look at the records. I presume that there are items like mailing of the plan and postage and other things in this proceeding which are items of expense subsequent to the filing of these proceedings.

There is attorneys' expense re trips to Danville of \$29.26 and court reporter. The court reporter was in this proceeding. There have been court reporter's transcripts of the various proceedings had before the Federal Court both on the involuntary and on the voluntary proceedings.

"Mr. Woods: Well, the court trustee is going to take the position that none of those items there were with regard to these hotel proceedings, unless they can show they paid the money while these proceedings were pending, because they have been in former litigation, of various sorts, and

paid out money of various sorts, and all of those items pertain to the former litigation.

"Mr. O'Brien: That is so on the face of it, that is right; that raises a law point which is for the Court to decide."

(Witness resuming.) The Committee out of a fund of its own paid the expenses, which are shown in Exhibit 1 988 attached to the petition which indicates various items totalling the sum of \$2,285.21. If the money came from the bank it was loaned to the Committee and thereupon was paid by the committee.

Those expenses in the amount of \$2,285.21 are not included as a part of the \$10,000 we are asking for. There are three items the committee is asking compensation for — one item of \$10,000, out-of-pocket expenses of \$2,285.21 and the fee requested by the City National Bank as Depositary, which has heretofore been presented by Mr. Boerger, requesting the amount of \$3,200 as such fee for depositary.

The Committee is asking that the items be paid to them so that they can discharge its obligation to the bank and reimburse them. The money that we expended was Committee money. The fact that we borrowed from the City National Bank means we are liable and must repay the City National Bank, but the money expended was committee money.

I would have to check the files but I am sure we gave a note for it. The bonds were pledged for it. We used the facilities of the bank for keeping accounts and issuing checks and things of that kind. Committee as such does not have a bank account of our own and don't draw checks. The bank does it for us on the order and direction of Committee. We took a note in respect of the Granada matter as in any other case with a pledge agreement. The note was not for a blank amount but for a specific amount. 989 We may use \$200.00 and then give the bank a note for \$200.00. If we use \$200.00 more we take a new note and give it for \$400.00. We make a new note every time we have to take out money with the exception of cases where they are nominal amounts. Nominal amounts we might let them accumulate until it makes it worth while as a transaction and then do it.

I cannot answer how recently we have signed such a note nor whether we have signed such a note since April without checking the records. There are too many things cross-

ing my desk for me to recall a thing like that. Committee has not received any monies or reimbursement from any of the depositing bondholders at any time that I can recall. It has not received any funds from any source except the funds that it has borrowed or pledged itself to secure, from the City National Bank and Trust Company that I can recall.

The \$10,000 requested was for services in this case here. We feel we should have reimbursement for our costs which goes back for services in contemplation of these proceedings, and in these proceedings.

This \$10,000 reaches back to the time the Committee was appointed in 1933. As far as anything we did at that time was in contemplation of these proceedings. It is very difficult for me to say what part of it applies to the period since May 24, when the committee became a party to these proceedings by intervention.

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Recross Examination by the Master.

Out of the total indebtedness of \$525,000, bonds, in the amount of \$331,600 were actually deposited with the committee. We are basing our 2% charge upon the amount of indebtedness without reference to the amount of bonds they have deposited with us. Had we only obtained \$50,000 of bonds, I take it that the reorganization would have failed. This reorganization benefits and works out 100% for all of the bondholders. Our efforts were directed to that particular thing. We are claiming 2% of the total indebtedness on the theory that this is a reorganization accomplished by our committee for the benefit of all of the bondholders.

Cross-Examination by Mr. Goldberg.

I take it for granted we would not have been in court if the debtor corporation had not filed a voluntary petition. I didn't mean to infer anything to the contrary or take credit for everything ourselves.

MR. VINCENT O'BRIEN, is a witness on behalf of petitioners, being duly sworn, testified:

991 My name is Vincent O'Brien. I am an attorney at law, duly licensed to practice at the Illinois Bar in 1920, and a member of the firm of Defrees, Buckingham, Jones & Hoffman. Our firm is counsel for City National Bank and Trust Company of Chicago, as Trustee under the first mortgage indenture, and also for the first mortgage bondholders' committee. Prior to the appointment of the City National Bank and Trust Company of Chicago, as Successor Trustee, we represented its predecessor in trust, Central Republic Trust Company, formerly known as Central Republic Bank and Trust Company.

We have filed our petition for the allowance of reasonable fees on account of services rendered by us for the Committee in this proceeding. The services rendered by us for the Successor Trustee and its predecessor in trust are included in Claim No. 9 heretofore filed by City National Bank and Trust Company of Chicago, as Trustee, more particularly in paragraph 5 of said Claim as amended, which is predicated on the decree of sale entered December 18, 1936, in the foreclosure proceedings numbered 519151 pending in the Superior Court of Cook County. The Trustee in Bankruptcy filed objections to the latter Claim, which have been set for hearing at the same time as the fee petitions filed by the various parties. The Trustee has also filed a counterclaim against City National Bank and Trust Company of Chicago, which was heard by the Court and is pending and undetermined. At the same hearing the report and account of the City National Bank and Trust Company of Chicago which was presented by us was heard, together with the objections of the Trustee in Bankruptcy thereto, and the Court likewise has the report and account under advisement, briefs to be filed and the matter to be orally argued by counsel.

Among other things the counterclaim filed by the Trustee in Bankruptcy relates to an item of \$3,857.79 paid by City National Bank and Trust Company of Chicago out of funds in its possession as Trustee for our attorneys' fees and expenses incurred in the old 77B action, the Harris-Tuttle case. The petition filed by us for services rendered to the Committee does not include that item on account of its previous payment. In the event of disposition of this item of the counterclaim favorable to the Trustee in Bank-

ruptcy, both we and the Committee will have to seek 993 leave to file a supplemental petition. Moreover, extensive services have been necessarily performed by City National Bank and Trust Company of Chicago, as Successor Trustee, and ourselves as its counsel in the matter of the preparation of and hearing on the report and account of the Indenture Trustee and the objections and counterclaim thereto, and those services are not yet concluded and therefore no separate petition for that work has been presented.

I shall give a complete statement as to all services, however, and in doing so I wish to point out that we are willing that the Court here fix the reasonableness of the charge for services rendered by us in the state court proceedings on behalf of the Indenture Trustee notwithstanding the existing limitations upon the Federal Court's right to review the allowance for such services made by the state court in the decree of sale. In other words, while the fees fixed by the state court stand as a claim, yet we waive that position and submit the entire matter *de novo* to this court.

Services on Behalf of the City National Bank and Trust Company of Chicago, as Successor Trustee, and of Central Republic Trust Company, Predecessor Trustee, Rendered Prior to the Proceedings Here.

The first mortgage issue was underwritten in September of 1928 three-fifths by Cody Trust Company and two- 994 fifths by Chicago Trust Company, which latter Company was named as Trustee in the mortgage indenture. The issue was for \$525,000, of which \$25,000 in bonds were subordinated at the time of issuance. The bonds matured serially, the first default occurring March 1, 1932, leaving \$485,500 of unsubordinated bonds outstanding in addition to the \$25,000 of subordinated. They are still outstanding and unpaid. About the same time Granada Hotel Corporation issued \$360,000 of second mortgage bonds, of which \$357,000 remain outstanding and unpaid. Its other indebtedness is as set forth at page 8 of the notice and plan of reorganization filed in these proceedings. The hotel premises, furniture and furnishings, being the chief property of the Debtor in these proceedings, are worth approximately \$400,000, as shown by the record in these proceedings.

The furniture, furnishings and equipment were not paid for out of proceeds of the first mortgage loan, but part of the purchase price was paid in cash by Granada Hotel Corporation to Albert Pick & Company and a first chattel mortgage was taken by Albert Pick & Company to secure pay-

ment of the balance. The validity of the Pick chattel having been questioned, proceedings had been brought in the United States District Court to restrain Pick from enforcing its chattel mortgage, which proceedings were ultimately determined in Pick's favor after appeal to the United States Circuit Court of Appeals and after certiorari denied by the United States Supreme Court. In this situation proceedings for the partial foreclosure of the second mortgage were brought in the Superior Court of Cook County, and Chicago Trust Company as Trustee under the first mortgage was joined as defendant and Chicago Title and Trust Company appointed Receiver in said action. Chicago Trust Company later consolidated with Central Trust Company of Illinois to form Central Republic Bank and Trust Company, which by operation of law and by the express terms of the first mortgage indenture became successor trustee and which later changed its name to Central Republic Trust Company. The latter Company was then substituted for Chicago Trust Company as defendant in said proceedings.

Albert Pick & Company filed its intervening petition in said foreclosure proceedings asking an order directing the Receiver to surrender to it all of the furniture, furnishings and equipment in the said premises, but this only after Pick had attempted to remove its alleged property without leave of court, so that we were compelled by way of petition to procure a restraining order. We prepared and filed the answer of the Trustee to the Pick intervening petition and set forth facts showing that the stove, carpets, in-a-door beds, kitchen and china cases were fixtures and part of the real estate mortgage security and not subject to the Pick chattel mortgage. The furniture and furnishings belonging to Pick were surrendered by the Receiver but only after we had procured an order of court prescribing the method of removal and so arranging the time as to permit the refurnishing of the property. The matter was so handled that the apartments were completely refurnished without loss of any of the tenants. The question as to whether the items above specified were fixtures or removable personal property was reserved by the court and later tried, the trial lasting for about three weeks, after which the matter was orally argued and voluminous briefs were prepared and submitted by both sides. The court took the matter under advisement and on January 15, 1932 found in favor of Albert Pick & Company and entered a decree ordering the Receiver forthwith to surrender the equipment

items to International and Industrial Securities Corporation, Pick's assignee, and reserved jurisdiction to determine the amount of compensation to be paid by the Receiver for the use of the property pending the litigation. The indenture trustee appealed from that decree to the Appellate Court of Illinois in and for the First District, prepared the record, which was quite voluminous, and prepared and filed its abstracts and briefs. The full abstract has heretofore been received in evidence in these proceedings. The matter was orally argued before the Appellate Court, which afterwards on March 14, 1933 published its opinion affirming the decree. We then applied to the Supreme Court of Illinois for a writ of certiorari and prepared an abstract of the complete record for the Supreme Court, and also filed 997 a brief in support of the petition. Certiorari was denied on

Prior to the time that the Appellate Court rendered its decision I had numerous conferences with the parties in interest in an attempt to effect a settlement, those parties including Cody Trust Company, Central Republic Trust Company, Wenstrand, Hall, Granada Apartments, Inc., on the one side, And Ringer, Wilhartz & Hirsch and Schanfarber on behalf of Pick's assignee. At about that time Pick was seeking to recover on a suggestion of damages filed against the surety company on the appeal and injunction bonds in the United States District Court proceedings above referred to. I believe that Wenstrand was really acting for Cody Trust Company in those proceedings. Hiram Cody and Lewis Riddle had given the surety company an indemnity agreement, but by 1933 Cody Trust Company was insolvent. Schanfarber was insistent on obtaining a settlement of the entire matter and demanded over \$50,000. We were interested merely in purchasing the fixtures and after long negotiation got Schanfarber to agree to take \$22,500 for those items. Then we found that we could not get the money. The Receiver did not have enough money on hand; Cody Trust Company was insolvent; and the Central Republic Trust Company, which might have lent the money by way of a trustee advance, had during 1932 pledged all of its assets to the Reconstruction Finance 998 Corporation to secure a large loan. Nor was there anywhere else to get the money, for during the year 1933 it was not possible to procure financing of a normal kind, let alone Receiver's certificates of indebtedness. The only person who had any reason for considering a loan was the surety company and the inducement would be to get

the suggestion of damages dismissed. To this end I again conferred with Schanfarber and showed him that his claim against the surety company was not substantial, first, because the bonds did not properly include attorneys' fees since that condition was in excess of the one provided by the United States statutes; second, because the restraining order had been in effect for only a very short period and not during the period that the cause was pending in the Court of Appeals and the United States Supreme Court. The reason was that the appeal bond was merely a cost bond and not a supersedeas, since it is the rule in the District Court that an appeal from a decree dissolving an injunction may not operate as a supersedeas unless an order be entered reinstating the injunction pending the appeal. There had been no such order. On this showing Schanfarber agreed to drop the suggestion of damages against the surety company if the fixtures items were purchased on the basis previously agreed upon, but this was only after he attempted to procure a larger amount. Schanfarber also agreed to satisfy the deficiency decree for in excess of \$50,000 against Granada Hotel Corporation and to dismiss the proceedings then pending for the appointment of a Receiver for that corporation; also to waive his claim for rent for the use of the property pending the state court litigation. I took this up with the Surety Company through its attorney, Wendell Shanner, and after full consideration the company agreed to advance \$11,500 on security of Receiver's certificate of indebtedness if the court in the foreclosure proceedings would direct the issuance of such certificate and on condition of course that the suggestion of damages be dismissed. I then conferred with the Central Republic Trust Company and the other parties in interest and prepared a petition for the issuance of Receiver's certificate and for authority to the Receiver to purchase the fixtures items for \$22,500.

This was not accomplished until August of 1933, by which time the Supreme Court had denied certiorari in the fixture litigation. Before I presented that petition I conferred with Mr. Murphy and Mr. Young and also Mr. Hall, and I had an inventory and appraisal made of all of the furniture, furnishings and equipment at the Granada, which is the same inventory and appraisal that I attempted to offer in evidence before Judge Barnes. I wished to know, as did the Central Republic Trust Company, what these items were then worth. I then presented the petition, together with the stipulation of the parties

in interest, and the court authorized the purchase of 1000 the fixtures and the issuance of the Receiver's certificate, after which the terms of the settlement were carried out. The beds and kitchen cases which were included in the settlement had been specially fabricated for the building, the company which had manufactured them was out of business, and they could not have been procured elsewhere. If we had permitted the property to be removed as decreed we would have lost the tenants, would have been compelled to repair the damage, redecorate the apartments and buy new equipment.

Pending discussion of the Pick settlement the Skarda law was enacted under which provision was made for the appointment of the County Treasurer as receiver to collect rents to satisfy taxes. Two proceedings for this purpose were brought in the County Court of Cook County and on behalf of the Trustee we were compelled to defend against the appointment of a tax receiver. It was not considered that the County Treasurer had a lien upon income for the payment of taxes, nor was it our opinion that the County Court of Cook County, Illinois had power and jurisdiction to appoint a receiver. Taxes were unpaid in a substantial amount, but objections to the validity of the assessments were pending and undisposed of. If the property was to produce income with which to pay taxes and with which to reduce other existing liens, it was imperative that it be kept occupied, which could be done only through the Pick settlement. Accordingly, pending discussion and nego- 1001 tiation, income was segregated in an amount sufficient, together with the proceeds of the Receiver's certificate of indebtedness, to pay the purchase price for the equipment items, and this segregation was effected through an escrow arrangement established at the City National Bank and Trust Company of Chicago, which later paid the sum of \$13,000 to the Receiver for the purpose of the settlement.

We were compelled to appear before the County Court on numerous occasions until the Supreme Court of Illinois held that the County Court was without jurisdiction to appoint a receiver, after which a new action for a Skarda receiver was instituted in the Circuit Court of Cook County, Illinois, where such arrangement was made with the County Treasurer and the State's Attorney as to avoid the appointment of a tax receiver upon deposit from month to month of satisfactory payments.

At the time of the entry of the order authorizing the issuance of the Receiver's certificate of indebtedness the state court also authorized the receiver to pay to us \$2,000 on account of our services for the Trustee in the fixture litigation, and that amount was so paid.

Pending the Pick litigation in the United States District Court approximately one-half of the Pick furniture (exclusive of said equipment items) had been removed to the basement of the premises and new furniture had 1002 been provided by the debtor corporation. Under the terms of the first mortgage trust deed the mortgagor had covenanted and agreed to give to the Trustee a good and sufficient chattel mortgage on all furniture and equipment, and had covenanted to renew the same from time to time, all as additional security for the payment of the first mortgage indebtedness. Prior to the conclusion of the Pick equipment settlement as aforesaid we insisted upon, and obtained from the debtor corporation and all other parties in interest excepting Eloy Wenstrand, execution of the chattel mortgage and note described in the plan herein, which chattel mortgage and note we prepared. Shortly after the consummation of the Pick settlement we procured Wenstrand's signature to transfer such interest as he might have. As a result, for the first time, the furniture and equipment was held by the Trustee as further security for the payment of the first mortgage indebtedness, subject of course to the Receiver's certificate and to the conditional sales contract hereinafter mentioned.

Cody Trust Company went into receivership in December of 1933. At the time of the appointment of Chicago Title and Trust Company as Receiver it had been represented to the Receiver by Cody Trust Company that the receivership would be of relatively short duration and was to be handled for less than the usual charge. The Chicago Title and Trust Company was unable to continue any longer on that basis and the Central Republic Trust Company was willing to take possession as Trustee. Accordingly, in April of 1934 a stipulation was entered into by all of the parties, including the holder of the Receiver's certificate of indebtedness, in and by which it was agreed that the Receiver forthwith surrender possession to the Trustee, later file its final report and account on the coming in and approval of which it was directed, after payment of its fees and those of its counsel to be fixed by the court, to pay \$2500 to Central Republic Trust

Company as Trustee, deemed to be necessary for working capital, and pay the balance in reduction of the amount due on the Receiver's certificate of indebtedness. It did make these payments and its account was filed and approved and the Receiver discharged. Under the arrangement in effect it requested, and was allowed, \$3,000 in full of its fees and \$300 in full of those of its attorneys, notwithstanding that the gross collections for the period of the receivership amounted to in excess of \$200,000. In the same order it was of course directed that the Central Republic Trust Company assume payment of the balance due on the Receiver's certificate of indebtedness which matured by its terms in August of 1936.

At the time the Trustee took possession there was approximately \$19,000 due on the conditional sales contract given by the debtor corporation to secure payment of the balance of the purchase price on account of new furniture. Central Republic Trust Company as Trustee, and later its successor in trust, City National Bank and Trust Company of Chicago, continued to hold and to operate the 1004 property until surrender of possession to the Trustee in Bankruptcy in this proceeding. During the period of the possession of the Trustee there was paid by the Trustee on account of general taxes the sum of \$32,969.41. The Receiver's certificate of indebtedness was reduced to \$4,000 and the conditional sales contract to \$3,000. The premises were put and maintained in a good state of repair and preserved for the benefit of the bondholders.

In July of 1933, public default having been made in the payment of both principal and interest due under the first mortgage, Central Republic Trust Company, as Trustee for the benefit of all parties entitled to the security of said trust deed, brought its cross-bill of complaint, which we prepared, in said foreclosure proceedings, to foreclose the entire issue, and joined as cross-defendants all parties having any right, title, interest or lien in the property. Process was issued for the cross-defendants, and they were personally served or entered their appearances. By way of supplement to the cross-bill the chattel mortgage so obtained was likewise sought to be foreclosed. Painstaking efforts were made to ascertain the names and addresses of the holders of the various junior interests and to get them into the proceedings personally. By November of 1933 the case was at issue on the cross-bill, and we pre-

pared notice and order for default and references and had the cause referred for hearing.

1005 Early in 1934 the Appellate Court of Illinois in and for the First District, in the case of *Straus vs. Anderson*, held that the Trustee under a mortgage indenture might, even in the absence of express authority, on a proper showing bid in the mortgaged property at a foreclosure sale for the benefit of all of the bondholders, and it further held that it was its duty so to do when directed by the court. The Trustee conferred with us as to the meaning and effect of this opinion and we briefed the question very thoroughly and recommended that the Trustee seek the instructions of the court in the premises. To that end we prepared an extensive amendment to the cross-complaint, setting up the facts and conditions and the mortgage provisions, and requested the instructions of the court as to whether the Trustee had the power to bid and as to whether under all of the circumstances it should exercise the power. We also prepared a notice of the motion for leave to file the amendment, an order in respect of the same, and the requisite additional summons and affidavits, for in so far as the cross-complaint as amended sought the directions of the court in respect of the trust property it was considered that the bondholders must be joined, and that was done through joinder of the first mortgage bondholders committee and through joinder as cross-defendants of a group of nondepositing bondholders who were representative of the whole class. It was necessary to get service on these additional defendants and

1006 a great deal of effort was expended in doing so until the cross-bill as amended was again brought to issue and re-referred for hearing. But before this was accomplished the Auditor of Public Accounts of the State of Illinois appointed a receiver for Central Republic Trust Company, one William L. O'Connell, and it was not possible to go forward with the suit until Mr. O'Connell had a reasonable time within which to resign the trusteeship on behalf of Central Republic Trust Company. Chicago Title and Trust Company was named as successor Trustee in the indenture but was unwilling to act. A great deal of time was necessarily spent in conferring with the Receiver's deputy, Mr. Charles H. Albers, with the Receiver's counsel, Igoe & Flaherty, and with their various associates, in respect of the mode, time and place of resignation and the settlement of the account which the Receiver was compelled to file on behalf of the Central Re-

public Trust Company. We personally handled all of those conferences and it was concluded, after carefully briefing the question, that the resignation should be filed before the court which had jurisdiction of the property and of all of the parties and that that court should appoint the successor trustee and consider the account which the Receiver was to file on behalf of the predecessor in trust. Accordingly, a petition was filed on behalf of the bondholders' committee setting up the facts and requesting the appointment of a successor trustee. We appeared in court a number of times on due notice, and prepared the order of appointment in which City National Bank and Trust Company of Chicago was designated by the court as successor trustee. We later appeared in court on the presentation by the Receiver of the account of the Central Republic Trust Company, and the Receiver upon the approval thereof was directed to, and did, turn over the funds in his possession to the Successor Trustee. It was then of course necessary to prepare and get leave to file a supplement to the cross-complaint substituting City National Bank and Trust Company of Chicago as cross-complainant, and that was done. In the meantime we had prepared the resignation to be signed by the Receiver, the refusal of the Chicago Title and Trust Company to act, and the various instruments of conveyance and assignment necessary to vest the title in the Successor Trustee.

At about the time that this was completed and the cause again ready for hearing an involuntary petition was filed at Danville under Section 77B, purporting to be predicated not on any act of bankruptcy and not on any pending equity receivership but merely on the pending foreclosure proceedings. This bankruptcy proceeding having been called to our attention we procured a copy of the petition, conferred with the title officers of the Chicago Title and Trust Company, and studied the law in reference to the jurisdiction of the court and in relation to the validity of the proceedings, especially in respect of the ultimate title to be derived through any reorganization had in such proceedings, and concluded that the proceedings and such title would be invalid unless the debtor corporation would appear and put in an answer amounting in effect to a voluntary petition, but found that Granada Hotel Corporation, against whom the petition was brought, had been dissolved long prior to the filing of the petition and that the owners of the stock of Granada Apartments, Inc.,

were then, as they always had been, unwilling to file a voluntary petition. As a matter of fact, when, a couple of months later, the same creditors filed an involuntary petition on the same grounds against Granada Apartments, Inc., the corporation defended through its own counsel on the ground that the court was without jurisdiction. To attempt a reorganization in this situation was only to further complicate matters, and accordingly we were directed by the Trustee and the committee to oppose the proceedings, which we did through an intervening petition prepared by us and filed on special appearance before Judge Lindley, raising the jurisdictional point and, through an intervening petition filed in the name of the Trustee, denying the right of the court to take possession of the property. Notwithstanding which the petition was approved by Judge

Lindley in the Granada Hotel Corporation case. Immediately Judge Lindley vacated his orders and called for briefs, which we prepared and furnished, on consideration of which Judge Lindley in a memorandum opinion filed in the cause approved the petition as properly filed, appointed a Trustee to investigate, but refused to restrain the prosecution of the state court action to decree.

At the direction of the Trustee and the committee, we appealed to the United States Circuit Court of Appeals for this Circuit, and on affirmance of the order by certiorari to the United States Supreme Court, in both of which courts we filed the records of the proceedings and prepared the necessary abstracts and briefs, in each instance the cause being orally argued. The United States Supreme Court reversed the lower courts and held that there was no jurisdiction. Accordingly the Granada Hotel Corporation case was then dismissed by this court, having been transferred here by Judge Lindley. The proceeding against Granada Apartments, Inc. had been held in abeyance pending the outcome of the Granada Hotel Corporation case, and after the decision by the Supreme Court in the latter case motion was made at Danville to dismiss the case against Granada Apartments, Inc., and we attended at Danville for that purpose.

The petitioners took leave to amend their petition. We moved to dismiss the petition as amended, for it was no better than the original one. Judge Lindley had that motion under advisement until the time the cause was transferred here, where it was dismissed by Judge Barnes. For the services thus necessarily rendered in the

old bankruptcy proceedings we were paid by City National Bank and Trust Company the sum of \$3500 on April 13, 1936, which amount in my opinion was an exceedingly reasonable charge for the service necessarily required and rendered by us.

By this time the Illinois Supreme Court had reversed the Appellate Court and it held that a mortgage trustee was without power or right to bid in on behalf of its bondholders at a mortgage foreclosure sale in the absence of clear and express authority contained in the trust deed permitting it so to do. The conventional foreclosure proofs had been completed before the master, but until further progress was made by the committee towards working out a reorganization agreement the entry of the decree of sale was deferred. By December of 1936 the committee advised us that it was likely that a plan would be worked out and authorized the entry of the decree of sale, which was prepared and entered December 18, 1936. That decree, a voluminous document, was in course of preparation and checking over a period of about three weeks, and is in evidence in this proceeding. Subsequent to the entry of the decree we procured a later date letter of opinion from the Chicago Title and Trust Company and were compelled to spend weeks of time in supplying information and data necessary to 1011 procure the removal of various objections, including among other things the locating and cancellation of various paid bonds and coupons ultimately found in many different places, all of which services will be of assistance in making good title through the proceedings here.

In February of 1936 we were advised by the debtor corporation of a suit brought against it in the Municipal Court of Chicago by one Rosenberg on account of certain first mortgage bonds. We checked that proceeding and followed it from time to time until judgment was entered against Granada Apartments, Inc. Later we were informed of Rosenberg's suit against the corporation for the appointment of a receiver and for liquidation brought in the Circuit Court of Cook County, Illinois. We attended before Judge Feinberg at the time of the motion for such receiver and prepared the portion of the order which made the Receiver's rights to possession and otherwise subject to the rights of City National Bank and Trust Company of Chicago, as Trustee. At the same time we conferred with Mr. Wenstrand, who claimed to represent the group which controlled the stock of Granada Apartments, Inc., and recommended that he cause the corporation to file a voluntary

petition in bankruptcy. Later and as a result of our activities, Granada Apartments, Inc., filed its voluntary petition in these proceedings.

In connection with the services so rendered on behalf of the Trustee and its predecessor in trust, we had innumerable conferences and telephone conversations and 1012 voluminous correspondence which I am not attempting to detail here, and there was necessarily spent in the rendering of such service 736 hours of time exclusive of the time spent in the fixture litigation with Pick.

Services on Behalf of the Indenture Trustee Subsequent to the Filing of the Petitions in Bankruptcy.

Upon learning of the filing of the new involuntary petition at Danville and later of the voluntary petition here, we conferred with the trustee and with representatives of the majority of the junior interests, obtained copies of the petitions, and were satisfied that a prompt reorganization could be effected. Petitioners were pressing their petitions in the respective jurisdictions and we conferred with the attorneys for the petitioning creditors in the proceeding at Danville and informed them that the Indenture trustee would retain possession of the property pending confirmation of any plan. We appeared at Danville on the hearing there held on motion for the approval of the petitions and on opposing motions for the transfer of the cause to this District. We took no part in the hearing on the motion for the approval of the petition but advised the court on his inquiry of the entry of the decree of sale and of the fact of the possession by the Trustee under the indenture.

When Judge Lindley transferred the cause here we attended before Judge Barnes on the proceedings had in 1013 connection with the approval of the petitions. We made no objection to their approval but had prepared and did file the petition of the Indenture Trustee setting up the fact of its possession and of its right to continue in possession pending the proceeding. After that hearing we conferred with the Indenture Trustee and it was decided that the Trustee would waive its right to hold possession and would turn the property over to the Federal Trustee in the interest of an early reorganization, since it was the position of the Court that there would be no reorganization and that the orders approving the petitions would be vacated if the Trustee prevailed in its contention as to its right to hold possession pending confirmation of any plan. We assisted in the preparation of the order approving the petitions and appointing the Federal Trustee and attended

in court at the time of the presentation of the order for entry. Following the entry of the order we informed the Court of our position and that there would be no appeal from the order.

We then conferred with the Federal Trustee and the Indenture Trustee in respect of the turning over of the property and of the approval and payment of various outstanding operating bills. We had many of those bills O. K'd. by the Federal Trustee and paid by the Indenture Trustee out of funds on hand. For a long period and almost every day we had conferences or telephone calls with the Indenture and Federal Trustees in respect of information, 1014 papers and documents which the Federal Trustee was attempting to assemble; also in respect of the disposition of some \$30,000 of second mortgage bonds held by the Indenture Trustee as security and various other second mortgage bonds. We likewise conferred with the Trustee and with Mr. Leonard of the City National Bank and Trust Company and others regarding various matters, most of which were later set forth in the answer and counterclaim filed by the Federal Trustee. In the first instance we procured and furnished the Federal Trustee with such information as we had relating to questions concerning those items. We conferred with the Bank regarding its report and account, and prepared its report and account and filed it in these proceedings. On the coming in of the Trustee's objections and counterclaim we spent days in checking the records and obtaining the facts relating to the matters there complained of.

We prepared and had executed and filed the claim of the Indenture Trustee on its own behalf and on behalf of the holders of all bonds and coupons, and expect to prepare and to have executed such documents as may be required of the Trustee in carrying out of the plan of reorganization heretofore confirmed. We were obliged to answer the objections and counterclaim filed by the Trustee. Those objections are of a serious nature and involve among other things large sums of money, by which the Federal Trustee seeks to have the account of the Indenture Trustee surcharged.

1015 The trial on the report and account, objections and counterclaim was only recently had and concluded before Judge Barnes. It extended over a period of approximately three weeks and at its conclusion the Court directed the filing of written briefs and the preparation and filing of propositions of law and findings of fact. We have not

as yet prepared ours but the matter is known to be sufficiently complicated so that the preparation of adequate findings and propositions will undoubtedly take many days time, and following the filing of all briefs the matter is to be orally argued. Until those proceedings are concluded it is not possible accurately to estimate the total time.

Services on Behalf of the Committee.

The Central Republic Trust Company and later the City National Bank and Trust Company of Chicago, as heretofore testified to by Mr. Arnold Johnson, set up and maintained a reorganization division for the purpose of servicing the holders of defaulted bonds of issues underwritten in whole or in part by "predecessor banks", including Central Trust Company of Illinois, Chicago Trust Company, Standard Trust and Savings Bank, and in part the National Bank of the Republic of Chicago. From the time of the default above referred to, the reorganization division, so constituted, had been giving attention to the Granada property, particularly to see that the income was sequestered and particularly in relation to the furniture and 1016 equipment situation above outlined. Early in 1933

Central Republic Trust Company with the cooperation of Cody Trust Company caused a committee to be formed consisting of Charles S. Tuttle, Lewis W. Riddle, William G. Sturm and Edward S. Clark, presently consisting of Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer. We were requested to and did prepare a deposit agreement, which was dated April 25, 1933, under which City National Bank and Trust Company of Chicago was named as depositary and we were employed by the committee. The deposit agreement is of record in this proceeding. The committee called the bonds for deposit and they were deposited at the times and in the amounts specified by Mr. Boerger in his testimony recently given.

At the outset it was necessary that the committee itself become familiar with the history of the property and with the problems which had arisen. We had numerous conferences with the committee members to give them all data which we possessed. The men assigned by the committee to get the facts performed the service testified to by Mr. Johnson and conferred with us in respect of the title situation so as to determine just what junior interests there were and the names and addresses of the parties in interest.

An exceedingly complicated title situation was disclosed from a reorganization standpoint. The title was vested in the debtor corporation subject to stock objections and subject to unpaid general taxes and pending objections thereto. The first mortgage trust deed secured 1121 bonds 1017 which had been widely sold, in many instances through dealers from whom the names and addresses of the purchasers were not often available. \$25,000 of the bonds had been subordinated and separately distributed. There was a second mortgage securing 370 bonds, aggregating \$360,000, of which approximately \$150,000 were located with three of the loop banks. The remainder of the bonds had been widely distributed, largely to customers and correspondents of Cody Trust Company. We have referred to the Receiver's certificate above, which of course was a lien on the trust property, subject only to taxes and also to the conditional sales contract which was a prior charge on the personal property. There were various unsecured obligations, both of Granada Apartments, Inc., and of Granada Hotel Corporation, some of which were later reflected in claims filed in this proceeding. There were 1,000 shares of common stock which were then controlled by Cody Trust Company and which, while within its control, were always considered available for the purposes of any plan of reorganization. There were an additional 1,000 shares of preferred stock, however, which had been widely distributed and many of which after full investigation proved to be unavailable for the purpose of any plan. Special problems existed because of the fact that the Granada was servicing two other properties with heat, refrigeration and water. We cooperated with the committee in contacting and conferring with various parties in interest with the idea of working out a reorganization agreement under which 1018 all of the junior interests might be deposited. There were times when weeks were spent in our office trying to locate different of the junior items.

Also, because of the history and conditions above outlined, it became a major problem to locate the paid and cancelled paper. This was accomplished after weeks of effort. Through our own efforts we were unable to get the junior interests together for the purpose of a reorganization agreement. Then various parties interested in acquiring the property conferred with us. There were at least five or six such parties, and all of the details were gone over, but in each instance nothing came of these conferences until Wenstrand, supported by Ingersoll, went out and, after

months and months of effort, acquired a substantial portion of the junior interests and claimed to have options to acquire the remainder. It would appear that Wenstrand's objective was to then get sufficient of the first mortgage bonds so as to enable his group to acquire the property. His efforts in that direction ultimately failed, however, because of the reasons as stated by Mr. Johnson, but the fact remained that through his efforts, whatever his motive, the holders of the junior items were located and the holdings considerably solidified, so that when it became necessary to procure assents for the purpose of the plan in this proceeding those efforts were of extreme assistance.

1019 During the period that Wenstrand was seeking to acquire the junior interests and to clear the title, we, as above noted, spent weeks of time on the same objectives. Prior to this and when it seemed impossible to reach a reorganization agreement, we conferred with the committee as to the possibility of proceeding with a conventional foreclosure so as to obtain title for the depositing bondholders through the issuance of a master's deed. That was not a feasible remedy, however, for there were too many bonds outstanding and too many prior obligations. Nor was the necessary financing available during the years 1933 and 1934.

In this situation we conferred with the committee as to the possibility of the Trustee's bidding in for the benefit of the bondholders so as to eliminate the junior interests through the issuance of master's deed, having in mind that the Trustee would then re-sell the property so that it might be acquired or liquidated for the benefit of the depositing bondholders. The committee was quite willing to attempt that, and it was then that the amendment for that purpose was filed on behalf of the Trustee as above stated. Later, the Supreme Court of Illinois having held that the Trustee was without power to make such bid, we again conferred with the committee and with Wenstrand and others in respect of a 90-10 parity deal, at which time it looked as though Wenstrand could deliver the junior interests for that purpose. After very considerable effort in this direction it developed that there was a controversy between Wenstrand and the Ingersoll heirs.

1020 Mr. Ingersoll had died and his heirs were unwilling to put in further money to acquire the items on which Wenstrand held options, nor could they be gotten together for the purposes of any plan until after the filing

of the proceedings in this court, during which the Court had occasion to determine the ownership of the items acquired with Ingersoll's money.

During these conversations we recommended proceedings in 77B. The committee was anxious to avail itself of this remedy, as it had done in other cases, but upon the closing of the Cody Trust Company the stock of the corporation had been acquired by the Ingersoll-Wenstrand interests, and it was obviously not their intention at the time to attempt to effect any reorganization but rather to acquire the property themselves, so that at no time were either we or the committee able to induce the stockholders to file a voluntary petition until the proceedings on which the involuntary petitions were predicated had been instituted, and then they gave serious consideration to the matter, with the result that the voluntary petition was filed. Before the filing of the petitions we learned that 1021 Wenstrand had brought suit in the state court to enjoin Fred Rathje's disposing of the junior interests acquired with Ingersoll's money and in escrow with Rathje, on the ground that he had part ownership in those items and Rathje had been enjoined in that proceeding.

When the new involuntary petition was filed we conferred with the parties in interest and with the committee, and, before hearing on that petition, with Walter Gunn, one of the attorneys for the petitioning creditors at Danville. We attended in court here on the original motion for the approval of the voluntary petition, which motion was continued. We attended before Judge Philip Sullivan on motion by the attorneys for the debtor to restrain the petitioning creditors from moving at Danville for the approval of their petition. We appeared at Danville on the motion for the approval of the involuntary petition.

When Judge Lindley transferred that cause to Chicago we attended before Judge Barnes on the motions for the approval of both petitions, and told the court that the committee was very eager to effect an early reorganization through these proceedings. On approval of the petitions we had extended conferences with Wenstrand, 1022 Fred Rathje, Vernon Loucks, attorney for the Ingersoll heirs, and also Attorney William Lodwick, who is associated with him and who also represented people who controlled other junior interests whose assent to any plan was essential. We found of course that the Ingersoll interests were opposed to both bankruptcy petitions, but we conferred with the committee and considered the

presentation by the committee of a plan which would give no participation to junior interests and also one which would. After full consideration of committee and its counsel it was decided to prepare a plan that would give participation, all in the interest of avoiding litigation and consequent delay and expense.

We then drafted the plan and again met with the committee, which formally approved the plan, and the plan was presented to the court by us for the committee without any prior understanding with the junior interests, although we informed the junior interests of the substance of the plan and of the amount of participation. This was done by way of a committee petition prepared by us for leave to intervene and for leave to file the plan and submit the plan to creditors and stockholders, to which petition the said deposit agreement was annexed as an exhibit.

Pursuant to said petition and said deposit agreement we prepared an order, which was entered by the court, granting leave to the Committee to file the plan and 1023 submit the plan to creditors and stockholders, classifying the claims and fixing the manner and time within which claims and objections thereto might be filed, fixing the time within which objections to the plan might be filed, fixing the time and place of hearing for proposal of the plan, and providing for the requisite notices to be sent to creditors and stockholders in this type of reorganization.

Prior to this we conferred with Mr. Goldberg, one of the attorneys for the debtor, as to the form of the order approving the petitions, and furnished the debtor with the bondholders' list to enable the debtor to comply with the terms of the order. The most concentrated attention was required to accurately obtain the facts necessary to be set forth in the plan. On the entry of the order we cooperated with the committee in procuring the printing of the plan and acceptances thereof, and carefully checked the printer's proof as to these items and cooperated closely with the committee in the preparation of its letter sent to the depositing bondholders. We also conferred with the Trustee in Bankruptcy as to the nature of his duties under the said order.

Prior to the date set for the hearing on the appointment of a permanent trustee, we prepared and drafted an order for the appointment of a permanent trustee, and later attended at the hearing and suggested that the temporary appointment be made permanent. The Court, how-

ever, continued the matter of the permanent appointment. The deposit agreement required that notice of the adoption of the plan and accompanying resolutions by the committee be lodged with the depository. We prepared these instruments and saw that they were so executed and so lodged.

We then prepared and filed the claim of the committee on account of deposited bonds and coupons and checked the files from time to time to ascertain what claims had been filed and what, if any, consents to the plan had been filed. Among other things we found that both Wenstrand and the Ingersolls had filed substantially similar claims for the items held by Fred Rathje in escrow. We conferred with Mr. Lodwick, one of the attorneys representing the Ingersoll interests, and attempted to get his parties to assent to the plan. Mr. Lodwick was desirous of having his controversy with Wenstrand adjudicated before assents were filed. We pointed out that that would delay confirmation, and delay was one of the things which we were attempting to avoid in presenting this type of plan.

We stated both to Mr. Lodwick and to Wenstrand that if there was to be any substantial delay we would be compelled to file an amendment to the plan in such way as to eliminate participation to junior interests. As against this, both Wenstrand and Mr. Lodwick's clients finally agreed to put in their assents, and they were filed. Also Mr. Lodwick undertook to have filed the assent of G. R. Curnock, who held \$50,000 in principal amount of the second mortgage bonds.

1025 We then conferred with the attorneys for the Reconstruction Finance Corporation, the Harris Trust and Savings Bank, and the Continental Illinois National Bank and Trust Company, and persuaded them to file their assents. The committee procured the assent of substantially all of the depositing bondholders in the manner provided in and by the deposit agreement, and later lodged that assent with the court. The committee, however, did not hold two-thirds of the first mortgage bonds, for there were dissents filed by some of the depositors who later appeared before Judge Barnes in an effort to take down their bonds without payment of any charge.

At about this time J. K. Moore, claiming to hold bonds and certificates of deposit, sent the bondholders postcard notice of a meeting to be held at the Great Northern Hotel called by him. We arranged to have that meeting reported. Mr. Moore was unable to persuade a sufficient number of

holders of CDs to dissent. We also presented this matter to the court. Substantially all of the required assents that were filed were procured through the direct efforts of the committee and its counsel.

Objections to the plan were filed by Edwin Rosenberg, by his attorney, Samuel Micon. Although he is still discussing those objections, it does not appear to be necessary to state them in detail here, for later we procured Mr. Rosenberg's assent to the plan.

1026 I, Gordon and others, the petitioning creditors, through their attorneys, Gilbert Wagner and J. R. Lasky, and David H. Greenberg, filed objections, which briefly summarized were:

- (1) that there should be no stock trust;
- (2) that the directors of the corporation should be appointed by the court, one from the minority bondholders, one from the committee, and one disinterested director;
- (3) that the court should retain continuous jurisdiction during the life of the stock trust;
- (4) that the committee should have no control of the property, but that the bondholders, the rightful owners, should control;
- (5) that the compensation of the stock trustees is not fixed and specified;
- (6) that the plan does not provide for the furnishing of operating statements from time to time and for access by the shareholders to the books and records of the new company.

Objections were also filed by said J. K. Moore. Mr. Moore is not an attorney and it is difficult to summarize here the precise nature of the voluminous objections which he filed. In a general way he attempted to point out that it would be a long time before there was a return to bondholders. He commented on the make-up of the committee, which he said is engineering the reorganization and attempting to get control of the property, and complained of the original underwritings because of which he said the committee members, or some of them, are not proper persons to represent the bondholders. He averred that the bondholders should be permitted to call meetings
1027 and communicate with each other and to dissent from the committee plan without paying "two dollars per hundred par amount of their bonds." He averred that the stock trust agreement should be eliminated and the stock delivered direct to the bondholders; that if the stock trust were to be retained that the trustees be selected from

among the bond owners and that their compensation and method of choosing their successors be specified by the court. Mr. Moore said that he held a \$500 bond and also represented the owners of \$3500 principal amount of non-deposited bonds and \$8000 principal amount of deposited bonds.

The debtor corporation, through Mort D. and Frank Goldberg, filed objections to the plan.

Prior to the hearing on confirmation we prepared and presented to Judge Barnes a petition in respect of the conflicting claims of Wenstrand and the Ingersolls, and we had prepared and issued by the Clerk and served by the Marshal subpoenas and subpoenas duces tecum for witnesses whose testimony might be required at the hearing. We also attended at the hearings had before Referee Chindblom on claims and objections thereto, and we prepared the order later entered allowing those claims which stand allowed.

We then appeared before Judge Barnes on the hearing on confirmation and presented the facts and substance of the plan, the reasons for its adoption by the committee, and fully presented and argued the matter before the court.

At that hearing attempts were made by the objectors to procure an appraisal and to offer evidence as to the value of the property so as to show that the junior interests should have no participation, and the substance of the objections as filed was made known to the court. The court, however, disposed of the objections holding that there was to be a stock trust and that he would appoint the stock trustees in order to prevent advantage being taken of the bondholders, which he thought surely would be the case if the stock trust provisions were eliminated. The Court having decided to confirm the plan, we prepared and had entered the order of confirmation, which order also made provision for the steps to be taken towards the consummation of the plan and set the time within which petitions for fees might be filed and set the date for that hearing.

We then prepared and submitted to the Court a form of stock trust agreement, and also drafted the articles of incorporation of the new company. I neglected to state that the Court indicated that there would be three trustees instead of five and that they would be selected by the court rather than as provided in the plan, and also that the Court at that time fixed the basis of compensa-

tion of the stock trustees, and these things were incorporated by way of amendment in the order of confirmation.

1029 We did not attend constantly at the hearing on the conflicting claims of Ingersoll and Wenstrand, but we did follow those proceedings sufficiently closely to know how they were concluded and to see that the proper order was entered. Later we prepared the petition for fees and our own as counsel for the Committee.

Recently we checked the draft of the trust agreement and draft of the other instruments necessary to consummate the plan, consisting of by-laws of the new corporation, deed from Trustee in these proceedings to the new corporation, general assignment and assumption between Trustee in these proceedings and new corporation, notice to Trustee under first mortgage to release trust deed and satisfy decree, notice to Trustee under second mortgage to release trust deed, form of release of first mortgage trust deed and satisfaction of foreclosure decree, form of release of second mortgage trust deed, and we also prepared notice, petition and order for the approval of those documents and for the necessary steps to be taken in connection therewith, and attended before Judge Barnes on the presentation of the petition after conferring with the Trustee relative to various points raised by him and by the stock trustees.

In the performance of this service there have been innumerable conferences, correspondence, and many court appearances which I have not attempted to detail here but which has taken a very substantial amount of 1030 time. We expect to carry this matter to its conclusion on behalf of the committee, which will involve the procuring and the execution of the said documents, the obtaining of a letter of opinion, the removal of any objections shown in that letter—always a substantial job in 77B proceedings. It may be necessary to have a loan, and the committee will either have to prepare or assist in preparing the mortgage notes with respect thereto and devote certain services in connection with the closing thereof.

It will also be necessary that we draft, present, and have entered the final decree in these proceedings.

We probably will be compelled to devote between one and two hundred hours in closing the case.

In my opinion reasonable compensation for all our services would be not less than a total of \$30,000, with

credit for the payments of \$5500, heretofore made us, and so we request a present net allowance to us 1031 of \$24,500. There are no requests for disbursements.

Cross-Examination by Mr. Woods.

I do not mean to say that our office conducted all of the lawsuits I have mentioned. Our office didn't file a lawsuit started by Wenstrand v. Pick & Co. We did represent Wenstrand and the Indemnity Insurance Company of North America when suggestions for damages were filed. We came in to represent them at that time.

I don't know whether our office handled the placing of the Granada Indenture on record for \$525,000 mortgage. We had something to do with the matter but whether it included the record, I don't know. We organized the Granada Apartments, Inc. but the indenture was made by the old company, Granada Hotel Company.

Our office first had something to do with the Granada in about 1924. We didn't place the indenture on in 1924. We rendered an opinion of title which accompanied or supplemented the Chicago Title opinion.

As near as I can remember it, in the case of all corporate bond issues which were then being made by the Chicago Trust Company they were asking for legal opinions as to the validity and as to the condition of the title and validity of the lien. We prepared whatever forms of Trust Deed were in use by Chicago Trust Company. That is, printed forms. They themselves drew up the trust agreement and filed it and asked us for an opinion. They had their own title division which included lawyers dealing with recording papers and the disbursing of loans. When the issue was put on in 1928 the Cody Trust and the Chicago Trust cooperated and I would think they used the Chicago Trust form, but I am not sure. The Cody Trust was then a separate institution. I do not know who attended to the release of the old Trust Deed in 1928. Our office possibly did it, I don't know. Whatever we had to do with the matter at that time was handled by Mr. Harding in our office. I didn't handle it personally but that green book I sent you tells the story.

I think it is substantially so that in 1929 we did handle the set up of the Granada Apartments, Inc. and the trans-

fer from the old corporation. The legal work was handled in our office. I never looked at the financial records in the Granada Company to see how much money was charged by Pick & Co. on the furniture account against Granada. All I knew was the amount of their merchandise and the amounts of any of the original down payment which came out of the proceeds of the loan. That loan statement is contained in the Abstract of the Record in the Illinois Supreme Court.

I would not be surprised if you told me those financial records showed charged by Pick & Co. against Granada, the old company and the new company, amounting to \$120,000. I never considered the question from the standpoint that \$120,000 worth of furniture must have 1033 been distributed among other places than the Granada itself. The only furniture I ever had occasion to consider was the new furniture purchased for \$35,000. I didn't handle that transaction except on the assumption of the balance due on the conditional sales contract amounting to about \$19,400.

I have a pretty good notion of what became of the \$120,000 worth of furniture. The inventory made in 1933 which fixed the value of the furniture at the Granada at \$40,000 after having spent \$35,000 in replacing it depreciated the value of the stuff in the place at that time, as those appraisers saw it; about forty-three or forty-four thousand in 1933.

I would say that our firm didn't handle the legal business for the Cody Trust Company in connection with the Granada. They had their own counsel. We didn't represent Cody Trust Company. I think we were acting for the Chicago Trust Company as its general counsel. I don't know as there were any other lawyers in the case however. I don't know whether there were other lawyers for Granada who represented the Cody Trust Company. As a matter of fact, I don't think there were any lawyers who handled that transaction except ourselves.

I recall payments having been made to the surety company on the receiver's certificate at times other than when we wanted their signature for some change in the record. The only payments that the trustee or the 1034 predecessor in trust ever made—there were only two of them—they made them and had no occasion to get any signature. The signature had nothing to do with it. What you are referring to is the initial payment made by the title company as receiver under Court order. That

was made because the surety company otherwise would not have assented to the entry of that order. I think they came into this arrangement by the receiver's certificate so they would get off the bond over here in the Wenstrand case. I think that is why they loaned their money. They must have had some good reason for lending it.

It is a fact that when we wanted to get the Chicago Title and Trust Company out of the picture and put the Central Republic in they demanded a payment and got it. It is not a fact that when we wanted to get Mr. Albers out and put City National in we paid him. That may be Mr. Hall's impression.

I handled the substitution of the trustee and it was done without any compensation or understanding with the surety company. We had no connection with Mr. Hall as to that phase of it. I think it was quite proper to pay money on that receiver's certificate, considering the language in it, which provides for the reservation to pay taxes and the reserve of \$8500 for other purposes. The reserve provision of \$8500 was one I put in in drafting that certificate and also, with Hall's practical advice, 1035 as to the needs of the hotel. If we needed money for receiver's fee or for receiver's counsel and if we were to receive some working capital. We were naive enough in 1933 to think we could accomplish a quick reorganization. If so, there would be cash requirements. But when it came to getting the receiver out and the trustee in we simply waived it. The provision was one for our own benefit. We waived it and let the surety company have the money in the reduction of certificates. I think that is what you asked about in view of the \$8500 reserve. City National didn't have that reserve on hand when it came time to turn over to this court. It had been used.

I told Mr. Shanfarber that the appeal bond was not an appeal bond, it was only a cost bond.

The order of Judge Wilkerson states that the supersedeas bond is to be in the sum of \$40,000 but the cases on the subject state that shall not constitute a supersedeas in the absence of a new order reinstating the injunction. I don't think they would have taken the chance of going to jail by going ahead with the sale if the Judge approved the \$40,000 bond. As a matter of fact, the purpose of my argument was to persuade Schanfarber he didn't have much of a claim.

We never like to test law points that can be tested 1036 only by going to jail for not following the court's orders. I don't remember what Schanfarber testified to the other day in reference to not agreeing with me about it, but he wanted to settle the matter. I do not know that Cody Trust Company and others agreed to pay off the Pick claim at the time the new financing was done in 1928. I didn't know that at any time. I know now that Hiram Cody, Wenstrand and Riddle were indemnitors on the surety bonds and I have since come to believe that Cody Trust Company was really running that litigation through Wenstrand.

I know this: In the underwriting of that refunding mortgage, the fact was it was the intention of the Chicago Trust Company to see that it required enough proceeds to take out this Pick title. Later, the Chicago Trust Company waived that loan requirement, first because there wasn't enough money to go around to take care of all obligations. It was purely a refunding loan. Secondly, because Hiram Cody was able to persuade McKieth that the Pick mortgage was invalid and no good, and he had the attorneys who could establish its invalidity. And on giving the bank the letter of indemnity or the Cody Trust, secured by the deposit of \$50,000 in seconds, the bank withdrew that particular requirement of the loan. That is what happened. That litigation was not successful.

The agreement was that the Cody Trust was to see that the Bondholders ended up with a good first mortgage on the property and they pledged \$50,000 of seconds to 1037 insure that. I think both the Chicago Trust Company and Cody Trust Company advertised in their circulars this furniture was part of the security sold to bondholders. They had no agreement with Granada but they had removed that lien out of the proceeds of the loan. The Granada had that condition in the loan agreement that they would do it. I know very little about it but what happened is in that green book that Harding prepared and those copies of the papers.

I do not say that there was not an existing cause of action against perhaps the Cody Trust and the Chicago Trust. I put a period there. And then as a practical matter they were both busted. The problem was, notwithstanding that cause of action, the pressing need of keeping this hotel operating and keeping Pick from taking out their equipment which they admittedly owned,

notwithstanding the cause of action, they also owned the furniture, and while Cody and the corporation found some way to put in furniture pending their private litigation with Pick. It got around to me on these equipment items Pick's title had been adjudicated and they could pull them out, and if they pulled them out they would close the hotel and make it necessary to put in new stuff. We had to get that new stuff no matter what was done here.

They operated the Lincoln Park Manor right 1038 across the alley when they didn't own the furniture but that was different. Mr. Gehn of the Lincoln Park Manor put up money on the second mortgage and he also owned the furniture. Mr. Gehn is running the Lincoln Park Manor and expected to work it out. Later when we got a receiver for the Manor, he still owned an equity, and the receiver had to pay so much a month rent for the use of the furniture to Gehn. He had no incentive to take it out; but Picks were experts in the business and they knew where to put on the pressure. Picks were otherwise strangers. They had no interest in the property.

Wenstrand personally owned a portion of the furniture in the property. That was why I wanted his signature. Some of that furniture belonged to Wenstrand himself. The reason that we got rent from Wenstrand and not from Pick and Co. was because Picks were going to pull that stuff unless they got paid. They felt that they could get paid.

These fixture items, the big items, if pulled would just wreck our building. I do not think they were just talking. They knew it was only junk when they took it out and I knew it. I thought it a good thing to take the bondholders money and buy it as long as I didn't pay too much for it. What they took out was movable furniture, like chairs. The place was not filled at that time.

There were vacancies.

1039 As to the furniture, we could make changes from one apartment to the other. We did that, but you can't do it with built-in equipment. I do not believe that if they damaged the property by taking out the equipment that they would have to replace it.

I think that under the decree settled by Judge Gentzel that they had the right to take out what was theirs without any obligation to repair or to fix up anything.

There was not \$10,000 on hand at the time we got into the Skarda proceedings which could be applied on taxes.

The money that was escrowed was \$13,000. That was the revenue from the property over months of operation and it was escrowed so that it would not be grabbed for the payment of taxes. We had \$10,000 during the year of the Skarda proceedings in 1935. During the time the old 77B was pending, but not determined by the court, we held that money. Judge Lindley said he had jurisdiction over it. It may be that they were selling the tax warrants at the time they made the transfer from the Chicago Title and Trust Company to Central Republic and it may be that the order provided that the receiver should sell the tax warrants although they had considerable money on hand. I didn't notice that. I knew about the order at the time but I don't remember that phase of it now. I don't remember whether our clients 1040 made any objection to that. I doubt if they did.

The Chicago Title and Trust Company was the receiver from June 30 to April, 1934; there was an order not to interfere with the management of the property as then set up but it is not true that all they did was to keep books for three months and the rest of the time merely receive reports. They followed it closely, as closely as they would in any other case with the exception that they did not put in one of their own men right out in the hotel to operate it.

It is not a fact that \$10,000 was accumulated over at the Central Republic and not turned over to the Chicago Title. It was finally escrowed with the City National. It was not accumulated with the Chicago Title. Hall accumulated it and maintained a regular account. He didn't turn it over to the Central Republic. He carried a trust account there. It was not his account. That was with the express consent of the Title Company, however. He had to make this settlement and did not want to spend money on taxes.

In 1933 I filed a cross complaint. I didn't know at that time that the old Granada Hotel Corporation had been dissolved by the Attorney General in 1930. I haven't learned it yet except from your statement about it 1041 in open court. I beg your pardon. I did learn about that through Ed Harding's telegram to the Secretary of State. He wanted to know for the purpose of an answer for that corporation in the first 77B proceeding. Harding wired the Secretary of State to see if they were in good standing. We found out they were done for.

In the decree entered in December, 1936, no one was ordered to pay money. It was an in rem decree.

There might be some recital in there about a deficiency against the Granada Hotel Company, but the court's right to enter a deficiency decree was continued until after the sale was confirmed. We sought to foreclose along with the real estate foreclosure this chattel mortgage.

The pre-existing indebtedness was the value given for the chattel mortgage, I understand. Without the chattel mortgage the bondholders would have had no claim on the personal property as against any third person, either purchasers or judgment creditors or the like.

We were doing exactly the same thing you attempt to do when you get a chattel mortgage with your real estate mortgage at the time you make your original loan. We had gotten the title cleared up in the year 1929 at the time we handled the transfer from the old company to the new company.

1042 It is possible that the title letter that was used in 1936 for the clearing up of those items was the one issued to Rathje and O'Connor. It is not a fact that Wenstrand did most of the work himself. Wenstrand did a very considerable amount of it. We cooperated with him in the doing of it.

Objections were marked off of our original foreclosure minutes and were marked off the original sheet in the title company's office. Our firm cooperated with Rathje and Wenstrand who were working on it. That was done at the time for the purpose of sale and my purpose in doing it was to get clear title for other reasons. I knew what he was trying to do.

I said this was a very involved and complex title from a reorganization standpoint. I think that title of that character can unquestionably be better handled in this court than in the State court. I think I have stated in some detail why we didn't go forward in the State Court.

We kept going forward by every method we could. As a matter of fact, in these real estate matters, I still think we could do it much more expeditiously and more simply just through a conventional foreclosure and Master's deed, if they had ruled the trustee could bid in. In everyone of these things we could have gotten the property for
1043 the bondholders alone. There is no question but what we spent six and a half years, from June, 1930 to December, 1936. Generally speaking, a 77-B form and mode is by far the better procedure.

We are not making any claim of any kind here for Wenstrand. He is not a client for whom we are asking a fee. I don't know what his present interest is.

The reason that a number of the original documents pertaining to this Granada matter were not produced by us to the court trustee was that we were just lawyers. We undoubtedly had certain original documents, the trust deeds, the title letters, at least, but as those matters were used and concluded we delivered them to the people who were entitled to them.

Cross-Examination by Mr. Goldberg.

In my claim for fees I included fees I am rendering in the cause now pending before Judge Barnes. With the qualifications I mentioned there. The claim for fees, as I have stated, includes everything we have done so far, and includes an estimate of the time which will be spent in concluding the case. And then beyond that it is predicated on a charge of fifteen dollars per hour, with the time running this way:

First, in the aggregate time, according to our records, is 2,025.6, which is divided as follows:

Under the Pick litigation, let us call it that, in the 1044 State Court, there was a total of 650.9 hours of time.

In the services of the trustee—including those in the old bankruptcy proceeding, there was a total of 717.8.

On the Committee side prior to the proceedings here, we had spent on the reorganization side of it, as distinguished from the Court end, 98.5 hours.

In the tax litigation we spent 30 hours.

In the proceedings here, from the time of their inception, breaking them off into the new file, we have at present spent 485.4, plus 53 hours.

That is without figuring any time to complete at all. The actual hours spent are 2,025.6.

What we have done is to figure from our own standpoint the total hours less the credits to get at the amount.

I realize that what I am testifying to here is what we did and what the time was and it remains for the court to figure out the total requests and the total allowances. As to the law question as to whether we should be compensated from the estate or from the property. In the event the court should find the City National Bank has been negligent in one way or another, or has mismanaged

in one way or another, and the Court surcharges its account, I would take it for that purpose the Bankruptcy Court is sitting as an equity court and that the Judge has the same control over the costs and expenses of the proceeding. For instance, he could even tax them against the other side. It is not like a lawsuit where costs go with the winner.

Beyond that the problems presented to Judge Barnes are severable. There are a whole list of them. There are a number of lawsuits in one bunch.

In my testimony here, either for ourselves or for the Committee, I have not said what cash, out-of-pocket, or other expenses, the trustee has expended thus far in this proceeding. Those are matters which are before Judge Barnes ultimately in the disposition of that controversy.

We want an equitable allowance of fees and expenses. I don't think the question of whether the estate should pay for defending someone in their own possible wrong can be answered by anybody but Judge Barnes when he gets through with the case.

Thereupon, the Master declared the hearings closed.

1046 CITY NATIONAL'S EXHIBIT NO. 8.

This Exhibit is the Report of Irving E. Brooks, dated September 21, 1937, made to I. L. Hertzman, Property Management Division, City National Bank and Trust Company.

It is an estimate of the construction cost and cost of operation for a power plant and heating system and for water supply system and for refrigerating system with respect to the Arlington.

A summary of the cost of construction and cost of operation was as follows:

1. Heating system:
 - (a) Cost of construction \$7,722.00
 - (b) Cost of operation 3,393.50
2. Cost of operation: 3,393.50
3. Water supply system:
 - (a) Cost of construction 3,245.00
 - (b) Cost of operation 986.75
4. Refrigeration system:
 - (a) Cost of construction 3,500.00
 - (b) Cost of operation 1,025.00

1047 CITY NATIONAL BANK & TRUST COMPANY'S
EXHIBIT "J."

This Exhibit is the First Mortgage Trust Deed dated September 21, 1928, from the Granada Hotel Corporation to the Chicago Trust Company securing the first mortgage bond issue. In addition to conveying the real estate, the indenture, at page 3, also conveyed

"all tenements, hereditaments, and appurtenances there unto belonging, including all window screens, door screens, curtain fixtures, furnaces, ranges, elevators, ice boxes, gas and electric fixtures, cleaning, power, heating, incinerating, and refrigerating apparatus, facilities and transmission and any and all other fixtures that may be now in any building or may be placed in any building now or hereafter standing on said premises"

Section 3 of Article V of the Indenture provides

"Mortgagor covenants at all times and from time to time, upon the request of Trustee, to cause to be executed, acknowledged, verified and delivered instruments of chattel mortgage and for extension of chattel mortgage upon personal property pertaining to operation of the mortgaged premises and all such assurances of title and additional papers and instruments and to do or cause to be done all acts and things which Trustee may deem necessary or desirable for effectually carrying out the intent hereof or for protecting and strengthening the security for payment of Bonds issued hereunder, or for confirming or assuring the lien of this Trust Deed as a first mortgage on the premises here by conveyed and mortgaged, any appurtenances thereto and the rents, issues and profits thereof."

1048 Article VIII of the Trust Indenture provides:

"Section 1. So long as Mortgagor shall perform all agreements on covenants herein, strictly and without grace, time being of the essence of this provision, Mortgagor shall be suffered and permitted to retain actual possession of and to manage, operate and use the mortgaged premises and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits from the mortgaged premises, on express condition that Mortgagor shall not anticipate any payments of rentals without express written consent of Trustee and shall make no assignment of the rents, issues and profits of the mortgaged premises except expressly subject to the prior rights of Trustee hereunder as of and from the date hereof.

"Section 2. In any case in which Mortgagor shall violate either condition to the provisions of Section 1 of this Article VIII or shall fail to perform any agreement or covenant hereunder, strictly and without grace, time being of the essence of this provision, Trustee shall, without notice, be entitled to the immediate possession of the mortgaged premises as for condition broken and may, by its agents, with or without entry, take actual or constructive possession of the mortgaged premises, together with all records, books, papers and accounts of Mortgagor relating thereto, or to Mortgagor's operation thereof, and exclude Mortgagor wholly therefrom, and Mortgagor agrees forthwith peaceably to surrender to Trustee and its agents the possession thereof. In any such case the assignment of rents, issues and profits of and from the mortgaged premises hereby presently made or intended to be made shall cease to be suspended and shall become effective as of the date hereof and Mortgagor and all tenants of Mortgagor or other persons occupying the mortgaged premises shall forthwith attorn to Trustee and thereafter pay and account to Trustee for all and every such rents, issues and profits then accrued and unpaid.

"Section 3. Trustee in possession of the mortgaged premises under the provisions of Section 2 hereof is hereby authorized to use, operate, lease and manage the same, by such agents as Trustee may select, and to apply the rents, issues, earnings, income and profits of and from the mortgaged premises, first, to the expense of operating the mortgaged premises, including the reasonable compensation of Trustee and its agents, second, to the maintenance of insurance, the payment of taxes, assessments and other governmental charges, the payment of mechanics' and 1049 materialmen's liens or other liens prior to or co-ordinate with the lien of this Trust Deed, to the putting and/or maintenance of improvements on the mortgaged premises in tenantable and usable condition and/or to such other like or unlike purposes as Trustee may, in its discretion, deem advisable for the preservation of the security afforded hereby, third, to the payment of interest secured hereby then due and unpaid, pro rata in the direct order of maturity thereof, with interest thereon at the rate of seven per cent. (7%) per annum and, last, to the payment of principal amount then due, whether by lapse of time or declaration, pro rata, without respect of differences in maturity thereof, with interest thereon at the rate of

seven per cent. (7%) per annum, but always subject to the provisions of Sections 6, 7 and 8 of Article III hereof.

The expense of administering the mortgaged premises, including the reasonable compensation of Trustee and of its agents and all sums advanced by Trustee under item second above shall constitute additional indebtedness secured by the lien of this Trust Deed on a par with moneys advanced or expended under Article VI hereof.

After payment of all amounts which before or during the period of Trustee's possession shall have become due or payable under any provision, hereof or of any Bond or Interest Coupon secured hereby, Trustee shall restore possession of the mortgaged premises to Mortgagor and pay over to Mortgagor the overplus, if any, of moneys which may have come into Trustee's hands while in possession of the mortgaged premises. The right of Trustee so to take possession of the mortgaged premises shall be a continuing right, exercisable as often as occasion therefor may arise. It shall not be exhausted by one or more users thereof nor shall it suspend or modify any right of foreclosure or any other remedy or recourse hereunder or under said Bonds.

"Section 4. Persons dealing with Trustee or with Trustee's agents in relation to the possession or operation of the mortgaged premises or the collection of rents, issues and profits thereof shall not be obliged to look to the application of the proceeds of any such dealing. Such persons shall look solely to Mortgagor or the Trust Estate and neither the Trustee nor any agent of Trustee shall have any personal or individual liability to third persons in respect of any such dealings. The operation of the mortgaged premises by Trustee may be carried on in Mortgagor's name and contracts, including leases, entered into may contain appropriate provisions embodying the substance of the preceding sentence. Trustee, as the expense of Mortgagor or of the Trust Estate, may provide itself and its agents with indemnity insurance against tort liability."

1050 Sections 1 and 3 of Article IX provide:

"Section 1. In any case in which, and when, under the provisions of Article VII above Trustee has the right to declare the principal of all Bonds hereby secured to be due and payable immediately, Trustee, without any action on the part of any Bondholder and without the necessity

of the possession of any of said Bonds or Interest Coupons or of declaring said Bonds due, may (and upon the written request of the holders of not less than 25% in amount of said Bonds then outstanding and upon being satisfactorily indemnified shall) institute such suit or suits, in equity or at law, in any court of competent jurisdiction, to enforce and protect any rights of Trustee or of the Bondholders hereunder as it may deem proper, and especially may institute proceedings to foreclose this Trust Deed in any manner provided by law and to obtain a sale of the mortgaged premises under order of court. Reasonable compensation for the services of Trustee and all costs and reasonably necessary expenses, including all expenses of trial and appeal and preparation for trial or appeal, reasonable attorney's and solicitors' fees, Master's fees; charges for taking, reporting or transcribing any statement of witnesses, deposition or evidence, expense of procuring evidence and cost of procuring abstracts of title, opinions of title and documentary evidence incurred by Trustee in any such suit, action or proceeding shall be so much additional indebtedness secured by this Trust Deed with a lien prior to that of holders of Bonds and Interest Coupons and of persons entitled to protection under Article VI hereof.

"Section 3. The proceeds of any foreclosure sale of the mortgaged premises shall be applied in the following order: First: To the payment of all costs and expenses provided in Section 1 of this Article and of all costs of advertisement, sale and conveyance; Second: To the payment of all expenses of the Trust hereby created, including all moneys advanced by Trustee or the holders of Bonds pursuant to the provisions of Article VI hereof and all sums secured hereby as in Article VIII hereof provided; Third: To the pro rata payment of the aggregate of the amount due on or for (a) Interest Coupons on said Bonds accrued and unpaid, plus (b) interest on overdue Interest Coupons at the rate of seven per cent. (7%) per annum and interest on principal of Bonds overdue by lapse of time and not represented by Interest Coupons, at the rate of seven per cent. (7%) per annum, plus (c) the principal of the Bonds secured hereby remaining unpaid; always without preference of principal over interest or interest over principal or of one installment of interest over any other, but subject to the provisions of Sections 6, 7 and 8 of Article III hereof; and Fourth: To the payment of the surplus, if any, to Mortgagor or as the court may direct."

1051 Section 2 of Article XI of the Indenture provides:

"Section 2. Trustee shall not be answerable for the default or misconduct of any attorney, agent, agency or employee appointed or employed by it, if selected with reasonable care, nor shall Trustee be answerable for any error of judgment or for any act done or step taken or omitted by it in good faith nor for any mistake of fact or of law based on information or advice deemed authentic and correct. The officers, representatives, employees and attorneys of Trustee shall have the same immunities from liability as Trustee and each shall be liable only for his own intentional and wilful wrong-doing."

Article XII of the Trust Indenture provides:

"Section 1. In case Chicago Trust Company shall become merged or consolidated with any corporation or corporations, or in case its trust business shall be transferred to any other corporation, this trust, with all its rights, titles, powers, discretions and immunities, shall devolve upon the consolidated or other corporation.

"Section 2. In case of the resignation of Trustee or its failure to act after proper request and due indemnity, or in case Trustee for any reason shall be unable or unwilling to act as Trustee, Chicago Title and Trust Company is hereby constituted and appointed Trustee hereof, with the same rights, titles, powers, discretions and immunities as if originally appointed Trustee hereunder."

1052 CITY NATIONAL'S EXHIBIT "K."

City National's Exhibit "K" is a chattel mortgage in part as follows:

"Know all men by these presents that the undersigned, Cody Trust Company, a corporation, Granada Apartments, Inc. a corporation, La Salle Furniture and Supply Company, a corporation, and Elof Wenstrand of the City of Chicago, County of Cook and State of Illinois, to secure payment of the sum of Seventy-Five Thousand Dollars (\$75,000.00) evidenced by the note of Granada Apartments, Inc. in the like principal sum dated August 23, 1933, payable to the bearer on the 2nd day of September, 1933, as security for the payment of said indebtedness and the fulfillment of the provisions of said note, for value received do hereby Grant, Sell, Convey and Confirm unto Central Republic Trust Company, a corporation of Illinois, with its offices at Chicago, Illinois, as Trustee under trust deed

recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996, and to its successors and assigns, the following goods and chattels (located and to be located on the premises described and known as Lots Thirty-Two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the South West quarter of Section 28, Township 40 North, Range 14, East of the 3rd P.M., in Cook County, Illinois) and any and all other personal property in and about the improvement now located on said premises, subject to conditional sales contract dated August 12, 1930, originally in the sum of Thirty-Five Thousand Dollars (\$35,000.00) made by Granada Apartments, Inc. to LaSalle Furniture and Supply Company and by LaSalle Furniture and Supply Company assigned to Cody Trust Company, and by Cody Trust Company assigned to Continental Illinois National Bank and Trust Company of Chicago."

(Here follows a specific room-by-room description of the goods and chattels conveyed and the usual covenants of title, chattel mortgage being executed by all of the parties named in the foregoing part thereof and being dated the 23rd day of August, 1933.)

1053 CITY NATIONAL'S EXHIBIT "L".

City National's Exhibit "L" is a chattel mortgage note for Seventy-Five Thousand Dollars (\$75,000) secured by a chattel mortgage, City National's Exhibit "K", dated August 23, 1933 and is payable to bearer, the Central Republic Trust Company and is signed "Granada Apartments, Inc. by R. W. Walters, Pres."

1054 CITY NATIONAL'S EXHIBIT "M".

City National's Exhibit "M" is an assignment from the Central Republic Trust Company and William L. O'Connell, as receiver of Central Republic Trust Company, to City National Bank and Trust Company of Chicago of all the right, title and interest to and under the chattel mortgage (City National's Exhibit "K", supra) and to the goods and chattels described in said chattel mortgage and their interest in and to the indebtedness secured by said chattel mortgage evidenced by promissory note (City National's Exhibit "L", supra). The assignment is dated January 3, 1935.

1055 CITY NATIONAL'S EXHIBIT "N".

City National's Exhibit "N" is the Decree of Sale entered in the proceedings for the foreclosure of the first mortgage (City National's Exhibit "J") in the Superior Court of Cook County on December 18, 1936.

The Decree recites that the cause comes on to be heard by the cross-bill taken as confessed by, among others, the Granada Hotel Corporation and Granada Apartments, Inc. The Decree contains among others, the following provisions:

"The Court, being fully advised in the premises, doth find:

1. That it has jurisdiction of the subject matter in this cause and of all the parties hereto."

On Page 8 of the Decree

"that on, to-wit, January 3, 1935, the cross-complainant, City National Bank and Trust Company of Chicago, was appointed Successor Trustee under said trust deed and that thereupon it accepted said appointment and has been continuously since then, and is now, acting as the duly appointed and qualified Successor Trustee under said trust deed and that the written acceptance of said City National Bank and Trust Company of Chicago, a corporation, of its appointment as said Successor Trustee under said trust deed has heretofore been filed herein and that upon its appointment as said Successor Trustee said City National Bank and Trust Company of Chicago thereupon became and is now vested with all of the rights, titles, powers, duties, immunities and discretions of the original Trustee under said trust deed and of said Central Republic Trust Company (formerly known as the Central Republic Bank and Trust Company) as Successor Trustee under said trust deed."

1056 Paragraph 12 of said Decree, at page 15 thereof, provides:

"12. That the original cross-complainant herein, Central Republic Trust Company, as Trustee, and the present cross-complainant herein, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, necessarily required the services of solicitors herein to institute and to conduct these proceedings and did engage such solicitors; that said solicitors have rendered various services herein and hereafter shall be compelled to render further services herein; that the fair, usual, reasonable and customary fees for the services rendered and to be ren-

dered herein by said solicitors are the sum of \$13,500.00; that said solicitors have agreed to accept the sum of \$9,000.00 in full of their fees for services rendered herein; that \$8,250.00 represents the fees of the cross-complainant's solicitors for the services rendered to date and the balance of said sum, \$750.00, represents the fees for services to be hereafter rendered herein by said solicitors. The Court hereby allows to the present cross-complainant herein the sum of \$9,000.00 for said solicitors' fees as an additional lien upon the premises involved herein under the terms of said trust deed prior and superior to the lien on the unpaid and outstanding bonds and interest coupons, together with accrued interest thereon."

Paragraphs 15 and 16 of the Decree provide:

"15. The Court states the account of the said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee as aforesaid (for its own use and benefit), against the said defendant and cross-defendant, Granada Hotel Corporation, a corporation, as follows:

Fees of cross-complainant for services as Successor Trustee	\$ 2,560.00
Cross-complainant's solicitors' fees	9,000.00
Court reporter's and stenographer's fees	39.90
Amount to be paid for additional minutes of title	100.00

\$11,699.90

1057 "16. That the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee as aforesaid (for its own use and benefit), has a first, prior and paramount lien upon the premises and real estate hereinafter described and the rents, issues and profits thereof and the personal property hereinafter described for the sum of \$11,699.90 and its unpaid costs of suit, if any, which lien is prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them, or any of them."

Paragraph 17 of the Decree finds due the Trustee for the benefit of the holders of unsubordinated bonds and coupons \$606,741.14.

Paragraph 18 provides:

"18. That the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as

Successor Trustee as aforesaid (for the use and benefit of the owners and holders of the unsubordinated bonds and interest coupons secured by said trust deed recorded as Document No. 10161996), has a first, prior and paramount lien upon the premises and real estate hereinafter described, and the rents, issues and profits thereof and the personal property hereinafter described, for the sum of \$606,741.14, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report, which lien is prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them, or any of them, but which lien is subject to the said lien of the said cross-complainant hereinabove described for \$11,699.90 and unpaid costs."

Paragraph 21 of the Decree provides:

"21. That there is now due to said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under the trust deed recorded as Document No. 10161996 (for the use and benefit of the following respective parties), the following sums:

1. For its own use and benefit the sum of \$11,699.90 and its unpaid costs of suit, if any;
 - 1058 2. For the use and benefit of the owners and holders of the unsubordinated bonds and interest coupons secured by the said trust deed recorded as Document No. 10161996 the sum of \$606,741.14, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report; and
 3. For the use and benefit of the owners and holders of the subordinated bonds and interest coupons secured by the said trust deed recorded as Document No. 10161996 the sum of \$31,173.17, together with interest thereon at the rate of 5% per annum from March 27, 1935, the date of said Master's report;
- which sums are liens upon the said premises and real estate hereinafter described, and the rents, issues and profits thereof and the personal property hereinafter described, in the above mentioned order of preference and priority and which liens are prior and superior to the right, title and interest of each and all of the defendants and cross-defendants herein and any and all persons claiming by, through or under them or any of them and for the payment of which the said defendant and cross-defendant, Granada Hotel Corporation, is personally liable."

Paragraphs 24 and 25 of the Decree provide:

"24. That by virtue of an order entered herein on or about the 11th day of August, A. D. 1933 the Chicago Title and Trust Company, then the Receiver of the premises hereinafter described, issued its Receiver's certificate of indebtedness dated August 23, 1933 for the sum of \$11,500.00, payable to the order of the Indemnity Insurance Company of North America, a corporation, on or before thirty-six months after date, with interest at the rate of 5% per annum, payable at maturity. Said order provided that said certificate was to be and constitute a valid and subsisting first and prior lien upon the premises and real estate hereinafter described and the proceeds of any sale thereof and the rents, issues and profits therefrom and said personal property hereinafter described, prior and superior to the right, title, interest and lien of each and all the parties to this proceeding.

1059 "25. The Court finds from evidence adduced in open court that on April 27, 1934, May 24, 1934 and September 22, 1936, the sums of \$1,482.26, \$3,006.73 and \$2,500.00, respectively, were paid on account of said Receiver's certificate, leaving a balance of \$4,511.01 now due thereon, together with interest on \$11,500.00 at the rate of 5% per annum from August 23, 1933 to April 27, 1934; interest on \$10,017.74 at the rate of 5% per annum from April 27, 1934 to May 24, 1934; interest on \$7,011.01 at the rate of 5% per annum from May 24, 1934 to September 22, 1936; and interest on \$4,511.01 at the rate of 5% per annum from September 22, 1936. That said Receiver's certificate is now held and owned by the Indemnity Insurance Company of North America."

Page 23 and 23½ of the Decree in part provides:

"The court finds from evidence adduced in open court that heretofore on or about January 3, 1935, the said cross-complainants, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, took possession of the premises involved herein under the terms of the trust deed recorded as Document No. 10161996. That as of September 30, 1936 the said cross-complainant represents it has on hand a balance of \$1,608.56, which sum should be applied on the indebtedness found due in this decree in the above mentioned order of preference and priority.

It Is, Therefore, Ordered, Adjudged and Decreed that said cross-complaint, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee, be,

and it is hereby, directed to apply said sum of \$1,608.56 on account of its first lien in the sum of \$11,699.90; and

The Court finds that, after applying said sum of \$1,608.56 as aforesaid on account of said sum of \$11,699.90, there is still due and unpaid to the said cross-complainant City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee (for its own use and benefit), the sum of \$10,091.34."

Page 24, etc. of the Decree directs that the Master in Chancery sell the property to satisfy the amounts found due the Trustee and makes the usual provision about redemption, failure of redemption and issuance of Master's Deed and also directs the sale of the chattel mortgage held as additional security under the terms of the chattel mortgage (City National's Exhibit "K") subject, however, to the conditional sales contract dated April 12, 1930 originally in the sum of Three Thousand Five Hundred

1060 Dollars (\$3,500.00) made by Granada Apartments, Inc. to LaSalle Furniture and Supply Company and by the latter company assigned to Cody Trust Company and by Cody Trust Company assigned to the Continental Illinois National Bank and Trust Company of Chicago.

At page 36 the Decree provides that out of the proceeds of sale, the Master or Special Commissioner is to pay to Insurance Indemnity Company of North America \$4,511.01, the balance to be paid on the said receiver's certificate of indebtedness, dated August 23, 1933, with interest thereon; that he is then to pay City National Bank and Trust Company of Chicago, as Successor Trustee for its own use and benefit or its solicitors of record the sum of \$10,091.34 and its unpaid costs of suit and is to distribute the balance as in said Decree provided.

1061 CITY NATIONAL'S EXHIBIT "S".

City National's Exhibit "S" is an order entered on November 30, 1935, in the Superior Court of Cook County, Illinois, in the foreclosure proceeding taxing the Master's fees as costs in the sum of \$2,552.80.

1062 CITY NATIONAL'S EXHIBIT "Q".

City National's Exhibit "Q" is an order entered on the motion of Defrees, Buckingham, Jones & Hoffman, as attorneys, for Central Republic Trust Company, as Trustee, on August 23, 1933 in the Superior Court of Cook County, Illinois, in the case of *William A. Thuma v. Granada Hotel Corporation, et al.*, (foreclosure suit), providing that

"It Is Ordered that the order heretofore entered herein on the 11th day of August, 1933, authorizing the receiver to pay certain funds to International and Industrial Securities Corporation be, and it is hereby, amended by adding the following paragraph:

"It Is Further Ordered that Chicago Title and Trust Company, Receiver herein, be and it is hereby authorized to make the said payment to Ringer, Wilhartz, & Hirsch, as solicitors for International and Industrial Securities Corporation."

It Is Further Ordered that the order heretofore entered herein on the 11th day of August, 1933, as aforesaid, be and it is hereby, further amended by striking from the receiver's certificate in said order set forth the following:

"(and, in the case of said personal property, if any, subject only to the lien of chattel mortgage recorded in the Recorder's Office of Cook County, Illinois as Document No.),

and by inserting in lieu thereof the following:

"(and, in the case of said personal property, if any, subject only to conditional sales contract dated August 12, 1930 originally in the sum of \$35,000 made by Granada 1063 Apartments, Inc., to LaSalle Furniture & Supply Company and by LaSalle Furniture & Supply Company assigned to Cody Trust Company, and by Cody Trust Company assigned to Continental Illinois National Bank and Trust Company of Chicago)."

1064 COURT TRUSTEE'S EXHIBIT "V".

This Exhibit is a circular put out by Chicago Trust Company in 1928, a part of which is as follows:

"Valuation: The Granada has been appraised by Chicago Trust Company and Cody Trust Company as follows:

Land	\$120,000
Building	680,000

Total	\$800,000
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In addition, and furnishing added security, the furniture and equipment in the Granada are valued at \$88,000."

92 COURT TRUSTEE'S EXHIBIT B.

City National Bank and Trust Company—Trustee
The Granada Apartment Hotel

Summary Analysis of Cash Accounts
From January 4, 1935 to May 17, 1937.

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Court Trustee's Exhibits.

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CITY NATIONAL BANK AND TRUST COMPANY—TRUSTEE

The Granada Apartment Hotel

Summary Analysis of Cash Accounts

From January 4, 1935 to May 17, 1937

	January 4 to December 31, 1935		Year 1936			January 1 to May 17, 1937			Total January 4, 1935 to May 17, 1937	
	Trustee in Possession Account	General Account	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account
Receipts										
Rentals and incidentals—net.....		\$66,476.44		\$73,133.80			\$29,803.60			\$169,413.84
Hotels—Heat, refrigeration, water, etc.....		14,185.89		14,192.07			5,522.85			33,900.61
Counter sales.....		74.03		52.88			19.51			146.42
Topics accounts receivable.....		606.72		577.92			202.02			1,386.66
Telephone.....		68.30		74.60			18.59			161.49
Exchange.....		9.07		2.96			.20			12.23
Former guests—Accounts and notes receivable.....		234.52		56.93			250.81			542.26
Returned insurance premiums.....	\$ 18.37	9.70		10.88		\$ 83.10	72.27		\$ 101.47	92.85
Miscellaneous.....		124.23		370.51			139.93			634.67
Accounts receivable—Miscellaneous.....		108.50		131.75			51.01			291.26
	18.37	81,897.20	—	88,604.36	—	83.10	36,080.79	—	101.47	206,582.29
Central Republic Trust Company—former trustee— Balance January 4, 1935 transferred.....	9,995.46								9,995.46	
Transfers:										
From General Account.....	11,687.30		15,022.50		1,608.56	5,224.93			31,934.73	
From Trustee in Possession Account.....										
Total Receipts—Forward.....	21,701.13	81,897.20	15,022.50	88,604.36	1,608.56	5,308.03	36,080.79	—	42,031.66	206,582.29
Disbursements:										
Payroll:										
Rooms, general and administrative.....		16,206.66		15,837.34			6,187.03			38,231.03
Heat and refrigeration.....		2,460.00		2,460.00			943.18			5,863.18
Painters, repairs and maintenance.....		3,480.00		3,250.00			1,541.01			8,271.01
Topics editor and hostess.....		300.00		300.00			100.00			700.00
Organist.....				160.00			80.00			240.00
Electricity.....		7,279.70		7,400.91			2,975.30			17,655.91
Fuel oil—Heat and refrigeration.....		6,488.04		7,529.95			6,158.70			20,171.69
Telephone and telegraph.....		2,856.90		3,190.68			1,500.40			7,547.98
Insurance.....	122.03	1,301.72		1,130.64			629.54		122.03	3,061.90
Rubbish removal.....		120.00		120.00			50.00			290.00
Gas.....		695.65		728.95			345.68			1,770.28
House laundry.....		2,877.91		2,873.35			1,338.40			7,089.66
Water.....		1,924.68		1,941.22			996.54			4,862.44
Guests' vault.....		377.86		994.34			349.70			2,321.90
Newspapers.....		408.64		412.50			166.36			987.50
Auditing.....	17.50	780.00		845.00			260.00		17.50	1,885.00
Management fee—Trustee.....		2,900.32		2,935.17			1,205.64			7,041.13
Management fee—Edward Hall, Agent.....		645.16		600.00			227.41			1,472.57
Miscellaneous expense—Edward Hall, Agent.....				100.00						100.00
Stoves—Cribben and Sexton Co.....				1,077.58			578.31			1,655.89
Carpets—Peter De Sitter & Bro.....		1,822.90		3,404.41			588.77			5,816.08
Forward.....	139.53	53,521.14	—	57,292.04	—	—	26,221.97	—	139.53	137,035.15

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Court Trustee's Exhibits.

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CITY NATIONAL BANK AND TRUST COMPANY—TRUSTEE

The Granada Apartment Hotel

Summary Analysis of Cash Accounts

(Concluded)

	January 4 to-December 31, 1935		Year 1936		January 1 to May 17, 1937			Total January 4, 1935 to May 17, 1937		
	Trustee in Possession Account	General Account	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account	Foreclosure Decree Distribution Fund	Trustee in Possession Account	General Account
Total Receipts—Forward.....	\$21,701.13	\$81,897.20	\$15,022.50	\$88,604.30	\$ 1,608.56	\$ 5,308.03	\$36,080.79	\$ —	\$42,031.66	\$206,582.29
Disbursements, Concluded										
Forward.....	139.53	53,521.14	—	57,292.04	—	—	26,221.97	—	139.53	137,035.15
Furniture—Chicago Seating Co.....		165.10		740.53			294.40			1,200.03
Federal social security taxes:										
Old age benefit.....							171.20			171.20
Unemployment.....							237.10			237.10
Other operating disbursements.....			9,491.27		9,937.19		3,481.81			22,910.27
Miscellaneous expense.....	3.40								3.40	
Note payable—Continental Illinois National Bank and Trust Co.—Furniture contract.....		4,800.00		4,800.00			1,600.00			11,200.00
Interest on note payable—furniture contract.....		720.00		432.00			80.00			1,232.00
Payments on receiver's certificate.....			2,500.00			511.01			3,011.01	
Real estate taxes and penalties—1929.....	7,565.06		220.73						7,785.79	
" —1930.....	1,396.85		8,358.42						9,755.27	
" —1931.....			5,416.44			2,300.00			7,716.44	
" —1932.....						2,001.00			2,001.00	
" —1933.....	1,710.91								1,710.91	
Personal property tax—1934.....	159.18								159.18	
Tax reduction fee—E. and M. Fuhrer.....			403.57			269.91			673.48	
Legal fees—Defrees, Buckingham, Jones and Hoffman	50.00		3,857.79						3,907.79	
Igoe and Flaherty.....	150.00								150.00	
R. C. O'Connell, Master in Chancery, foreclosure fee			2,552.80						2,552.80	
D. H. Reed, Clerk of U. S. District Court.....				167.50						167.50
Title examination—Chicago Title and Trust Co.....								100.80		
Transfers:										
To Trustee in Possession Account.....		11,687.30		15,022.50			5,524.93			32,234.73
To foreclosure decree distribution fund—October 29, 1936.....			1,608.56						1,608.56	
To Federal unemployment insurance fund.....							182.66			182.66
To Weightstill Woods, Federal Trustee, May 17, 1937.....						773.40			773.40	
Total Disbursements.....	11,174.93	80,384.81	24,918.31	88,391.76	—	5,855.32	37,794.07	100.80	41,948.56	206,570.65
Excess Receipts over Disbursements.....	10,526.20	1,512.39	9,895.81*	212.54	1,608.56	547.29*	1,713.28*	100.80*	83.10	11.65
Balance at beginning of period.....	—	—	10,526.20	1,512.39	—	630.39	1,724.93	1,608.56	—	—
Balance at end of period.....	\$10,526.20	\$ 1,512.39	\$ 630.39	\$ 1,724.93	\$ 1,608.56	\$ 83.10	\$ 11.65	\$ 1,507.76	\$ 83.10	\$ 11.65
The following contra receipts and disbursements are excluded from above receipts and disbursements:										
U. S. Treasury bills.....	\$10,000.00									
Currency checks.....		\$ 5,762.49		\$ 2,985.43			\$ 973.35			
Returned checks redeposited.....		392.27		814.00			3.00			

*Indicates red figures.

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182 COURT TRUSTEE'S EXHIBIT J.

And on, to wit, the 22nd day of January, 1935 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Intervening Petition in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2613D) * *

INTERVENING PETITION OF CITY NATIONAL
BANK AND TRUST COMPANY OF CHICAGO, AS
TRUSTEE.

Now comes City National Bank and Trust Company of Chicago, and leave of court being first had and obtained and for the purpose of its special and limited appearance heretofore entered herein, represents:

1. That on the 29th day of April, 1929, Granada Hotel Corporation was the owner of the real estate and premises described as

Lots 32 and 33 of Out Lot "C" in Wrightwood, a Sub-division of the Southwest Quarter of Section 28, Township 49 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, among other things subject to a first mortgage bond issue of \$525,000 secured by trust deed to Chicago Trust Company, as Trustee, recorded in the Recorder's Office of Cook County, Illinois, October 1, 1928, as Document 10161996; that the apartments in the improvement on said premises were furnished and that the said improvement was operated as an apartment hotel, but that the interest of the said corporation in and to the said furniture and equipment was subject to the lien of a chattel mortgage held by Albert Pick & Company.

2. That on April 29, 1929, Granada Hotel Corporation, by its warranty deed, conveyed the said real estate and premises to Granada Apartments, Inc., which said

183 deed was duly delivered and recorded in the Recorder's Office of Cook County, Illinois, at or about the date thereof, and that on April 29, 1929, Granada Hotel Corporation assigned and transferred to Granada Apartments, Inc. all of its right, title and interest in and to all prop-

erty of every kind whatsoever held or owned by it or in which it might have any right, title, interest or claim.

3. That on April 29, 1929, as aforesaid, Granada Hotel Corporation disposed of all of its assets and property and that thereafter on the 7th day of May, 1930, it was dissolved by decree of the Superior Court of Cook County, Illinois; entered in cause there pending as No. 50985, at the instance of the People of the State of Illinois in an action brought through the Attorney General for the State of Illinois, and that said decree has never been reversed, vacated or modified in any way.

4. That on the 10th day of June, 1930, proceedings for the partial foreclosure of a mortgage upon the above real estate and premises were filed in the Superior Court of Cook County, Illinois, in cause No. 519151, and Chicago Title and Trust Company was appointed Receiver in said proceedings; that thereafter Central Republic Trust Company, as successor by consolidation to said Chicago Trust Company under said Document 10161996, filed its cross-bill of complaint for the foreclosure of the first mortgage, which proceedings are still pending and undetermined.

5. That on June 24, 1930, an order was entered in said cause No. 519151 on the petition of Albert Pick & Company, directing Chicago Title and Trust Company, Receiver, to surrender to Albert Pick & Company any and all personal property belonging to Granada Hotel Corporation, and that the said Receiver did surrender said personal property.

6. That before and after the entry of the order requiring the surrender of said personal property, Granada Apartments, Inc. purchased sufficient personal property fully to refurnish said apartment hotel and that Granada Apartments, Inc. and others, by chattel mortgage, transferred to Central Republic Trust Company all their right, title and interest in the new personal property as further security for the payment of indebtedness of Granada Apartments, Inc. and as further security for the payment of the bonds secured by said Document 10161996.

7. That thereupon Central Republic Trust Company filed its supplemental cross-bill in the said state court 184 proceedings for the foreclosure not only of said Document 10161996, but also of its said chattel mortgage aforesaid, and that said proceedings are still pending and undetermined.

8. That on the 16th day of March, 1934, by order of the Superior Court of Cook County, Chicago Title and Trust

Company, as such Receiver, was directed to and did surrender possession of said real estate and personal property to Central Republic Trust Company, as Trustee, which took possession thereof and held it until January 3, 1935 under the terms of its trust deed and as mortgagee in possession after condition broken.

9. That on January 3, 1935, by order of said Superior Court of Cook County entered in the said proceeding, City National Bank and Trust Company of Chicago, your petitioner herein, was appointed Successor Trustee, and as such Successor Trustee on January 3, 1935 took possession from Central Republic Trust Company, and has since been, and is now, in possession of said property.

10. That on April 24, 1934, Chicago Title and Trust Company presented its final report and account in the said state court proceedings, which report and account were approved and the said Receiver was discharged by order entered that day in said proceedings.

11. That by reason of the premises, your petitioner avers that the debtor corporation has no right, title or interest in and to said real estate or personal property, and further avers that there is in existence no corporation known as Granada Hotel Corporation.

12. That on the 18th day of January, 1935, the petitioning creditors herein applied for an order appointing a Temporary Trustee to take possession of the property of the debtor corporation described in the original petition herein and for an injunction restraining the further prosecution of said state court cause No. 519151 and for an order upon the question of the permanent possession of the Trustee, or in the alternative, restoring the debtor to possession.

13. Your petitioner asserts a claim adverse to that of the debtor corporation, the petitioning creditors and any Trustee which may be appointed herein, and avers that it has not consented to an adjudication of the title to said real estate or said personal property or to the possession thereof by this court in a summary proceeding; that a controversy exists with reference to said real estate and personal property and that this court is without jurisdiction or right in law to summarily order any Trustee

herein to take possession of said real estate or said personal property, and without jurisdiction to restrain the prosecution of said proceedings cause No. 519151 which relate to property in which the debtor corporation has no right, title, interest or claim.

14. That the taking of possession of said real estate or personal property or any jurisdiction thereof by this court in view of the facts herein shown would be a violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, your petitioner asserts an adverse claim and controversy in reference to said real estate and personal property held adversely as aforesaid and that the motion of the petitioning creditors herein for an order appointing a Temporary Trustee to take possession of the said property, for an injunction restraining the prosecution of said cause No. 519151 and for an order setting the date for hearing upon the question of the permanent appointment of the Trustee, or in the alternative, restoring the debtor to possession, should be denied.

City National Bank and Trust Company
of Chicago,

By Don Kenneth Jones,

Defrees, Buckingham, Jones &
Hoffman,

Its Attorneys.

Don Kenneth Jones,
Defrees, Buckingham, Jones & Hoffman,
*Attorneys for said Intervening
Petitioner.*

State of Illinois }
County of Cook } ss.

Vincent O'Brien, being duly sworn, on oath deposes and says that he is one of the attorneys for and the duly authorized agent in this behalf of City National Bank and Trust of Chicago, as Trustee, petitioner herein; that he has read the above and foregoing petition on its behalf subscribed, knew the contents thereof, and that the same is true.

Vincent O'Brien.

Subscribed and sworn to before me, this 22nd day of
January, 1935.

(Seal)

Kirsten Sorensen,
Notary Public.

186 And on, to wit, the 22nd, day of January, 1935, came C. S. Tuttle, et al, by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

EXHIBIT 3.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—2613D) • •

ANSWER OF C. S. TUTTLE, ET AL., TO THE ORIGINAL PETITION OF SAM HARRIS, ET AL., FILED HEREIN.

Now come C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, and for answer to the original petition filed herein say:

1. That there have been deposited with them under the terms of said deposit agreement first mortgage bonds of Granada Hotel Corporation in excess of \$300,000. principal amount, and that under and by virtue of the terms and provisions of the said agreement full and complete title, legal and equitable, in and to the said bonds has been and is vested in these respondents, by reason of which they are creditors of Granada Hotel Corporation having provable claims which they aver in the aggregate are in excess of the value of the securities held by them to the sum of One Thousand Dollars (\$1,000) or over.

2. They are not informed as to the averments set forth in paragraphs numbered 1 of the said petition, but they admit the averments contained in paragraph 2 thereof.

3. They deny that the said debtor is within the jurisdiction of the court under the provisions of the Bankruptcy Act, but admit that there is pending in the Superior Court of Cook County the said cause there numbered 519151 described in paragraph 8 of the said petition; they admit that during the pendency of said proceeding Chicago Title and Trust Company was named Receiver therein, but aver that at the time of the filing of the petition herein Chicago Title and Trust Company was not acting as Receiver, and
187 further aver that on the 16th day of March, 1934 an order was entered in said Cause No. 519151 directing

said Chicago Title and Trust Company, as Receiver, forthwith to surrender to Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, all property in its possession as such receiver, and further aver that the said trust deed Document 10161996 is the trust deed securing the issue of first mortgage bonds hereinabove mentioned. They further aver that the said Receiver did, pursuant to said order, so surrender possession to said Central Republic Trust Company, as Trustee, and that said Trustee held possession as mortgagee in possession after condition broken until the 3rd day of January, 1935, on which date City National Bank and Trust Company of Chicago was appointed Successor Trustee to Central Republic Trust Company by order of said Superior Court of Cook County, Illinois entered in said Cause 519151, and that on the 3rd day of January, 1935 possession of the property involved in the said proceeding numbered 519151 was surrendered to, and is now held by, City National Bank and Trust Company of Chicago as such Successor Trustee and as mortgagee in possession after condition broken.

4. Your respondents further aver that on the 24th day of April, 1934 the final account and report of Chicago Title and Trust Company as such Receiver was filed in said Cause 519151 and approved by the court therein, and that the said Receiver was by order of court entered on the date last aforesaid duly discharged.

Wherefore, and from the facts appearing in the original petition herein, these respondents say that the petitioners are without right to file their said petition, that the court is without jurisdiction to entertain it, that it should not be approved as properly filed, and should be dismissed.

C. S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
W. G. Sturm,
E. A. Kilmer,

By Don Kenneth Jones,
Defrees, Buckingham, Jones &
Hoffman,

Their Attorneys.

Don Kenneth Jones,
Defrees, Buckingham, Jones & Hoffman,
Attorneys for said Respondents.

225 And afterwards, to wit, on the 26th day of February, 1935, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitle cause, before the Honorable Walter C. Lindley, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2613D) * *

Parties holding bonds of the Granada Hotel Corporation, secured by trust deed, filed herein on December 31, 1934 their creditors' petition under Section 77-B of the Bankruptcy Act, seeking reorganization of the property, which consists of an apartment building, of some 200 apartments. The defendant corporation made no response to service of subpoena and has been defaulted. Evidence has been submitted upon the question of good faith, from which it appears that the petitioners are bona fide bondholders, who received their securities largely in consideration of services rendered in the construction of the building.

226 The City National Bank and Trust Company, as trustee, on January 22, 1935 filed its special and limited appearance, urging that the Court has no jurisdiction, for the reason, as it alleges, that the Granada Hotel Company sometime ago conveyed its property to the Granada Apartment Company. The trustee filed also its intervening petition, asserting the same facts, and further, that in a foreclosure suit pending in the state court, a receiver, originally appointed to hold possession of the premises pending foreclosure, had been discharged and that an order had been entered in that court putting the trustee in possession. The trustee contends, therefore, that it is an adverse holder, and that the Court has no jurisdiction over it or the property in its possession. A bondholders' committee appeared for the purpose of attacking the jurisdiction of the court, asserting that the state court proceedings does not constitute an equity receivership within the meaning of Section 77-B.

As the Court has previously pointed out, the intent of Congress apparently was to give the holders of bonds in default an opportunity to have property securing their bonds reorganized in the federal court in lieu of liquidation under foreclosure in either the state or federal court. Act-

ing in pursuance of that right, the creditors, after patience with long extended foreclosure proceedings, not yet blossoming into decree, have filed their petition in proper form and submitted their evidence. The Court finds that the petition was filed in good faith and should be approved.

The Court is not impressed with the contention that the facts related do not constitute an equity receivership, essential to jurisdiction of this court. As is frequently observed, a receiver is a fiduciary of the Court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed. The trustee, here, likewise, is a fiduciary of the state court and is acting under the orders, directions and control of that court. Words of themselves are unimportant; whether the trust be called a receiver, a guardian, a custodian or by some other name, it remains, in its essence, a fiduciary in possession of property pending the outcome of foreclosure, holding under the Court's order, incidentally to the ultimate purpose of the state proceedings. Consequently there is an equity receivership within the meaning of that term as used by Congress.

Upon the question of whether the trustee is an adverse holder the Court at this time expresses no opinion. The effect of any conveyance from one corporation to another of similar name is not now before the Court.

Whether the facts are such that there is a holding of title adverse to the trustee is a question which must be determined from evidence submitted after full hearing. It is well recognized that this court has jurisdiction to examine the character of alleged adverse holdings and determine whether claims of adverse title is merely colorable or is asserted in good faith. But this Court is not now examining or determining that question.

The trustee contends that there should be no restraining order against the foreclosure proceedings in the state court. Those proceedings have been pending for some four or five years and have not yet reached final decree. I am advised by counsel that the ultimate effect of a decree will be to bar certain parties claiming some interest. It seems desirable, therefore, that those proceedings be allowed to proceed to a decree. Such prosecution may result in the saving of time and expense in marshaling and liquidation of claims. However, it is desirable that no sale be had until it can be determined what is to be done under the present proceedings. I take it that counsel will not proceed to a sale without further communicating with the Court. Consequently, I shall at this time issue no restrain-

ing order against the prosecution of the foreclosure proceedings to an ultimate decree of foreclosure, but the Court will be open at all times, if necessary, for the purpose of entertaining application for injunction against a sale of the property.

Accordingly the Court finds that there is an equity receivership within the meaning of the statute; that the Court has jurisdiction of the petition; that same was filed in good faith and that a temporary trustee should be appointed, notice given to creditors and hearing had as to the appointment of a permanent trustee. Proper order may be submitted. The Court appoints Fred C. Myers as temporary trustee with directions, however, not to take possession of the property but to investigate and report fully. He should have counsel so that he can determine whether there is reasonable ground for him to invoke the jurisdiction of this court to determine in a summary proceedings whether claim of title is made in good faith or is merely colorable, or whether he should proceed with a plenary suit for such relief as the facts will warrant. Accordingly no bond is necessary at this time.

Entered this 26th day of February, A. D. 1935.

Walter C. Lindley,
Judge.

487A COURT TRUSTEE'S EXHIBIT O-1.

(Stamp) File 12429 J. S. Prouty.

(Stamp) C. J. Zurick Received Aug 24 1933 Referred to File Ans.

Know All Men By These Presents, That we, International and Industrial Securities Corporation, a New York Corporation, in consideration of the sum of Ten (10) Dollars and other good and valuable considerations, receipt whereof is hereby acknowledged, have remised, released and quit claimed, and by these presents hereby do remise, release and quit claim unto Central Republic Trust Company, a corporation, as trustee, under Trust Deed recorded in the Recorder's office of Cook County, Illinois as document 10161996 and to its successors and assigns, to and for their own proper use and behoof forever, all of our right, title and interest in and to such part of the goods, chattels and property as follows:

325 yds 1/2 Spec. Axminster cpt for apt.
 85 " 5' 6" wide spec. Axminster cpt for corridor.
 625 " 1/2 Spec. Ax. Cpt to cover apt.
 375 " 1/2 Spec. Vel Cpt to cover apt.
 197 " 1/2 Spec. Axm. Cpt to cover Apts.
 625 " 1/2 Spec. Axm. Cpt to cover Apts.
 575 " 1/2 Spec. Velv Cpt to cover Apts.
 124 " 5' 6" Spec. Ax. Cpt for corridor.
 945 Sq yds 3/8" Ozite for all corridor.
 4470 Sq yds 1/4" Thick Ozite for all rooms.
 2 Pc. Corridor Carpet 5' 6"/27" end. Bd.
 14 Only White Door Bed.
 235 yds 1/2 Spec. Vel. Cpt. for apts.
 197 yds 1/2 Spec. Ax. Carpet.
 124 yds 5' 6" wide spec. Ax. Cpt.
 197 yds 1/2 Spec. Ax. Cpt.
 625 yds 1/2 Spec. Ax. Apt.
 575 yds 1/2 Spec. Vel. Cpt.
 124 yds 5' 6" wide spec. Axm. Cpt.
 197 yds 1/2 Spec. Axm. Cpt.
 625 yds 1/2 Spec. Axm. Cpt.
 575 yds 1/2 Vel. Cpt.
 124 yds 5' 6" wide Spec., Ax. Cpt.
 16 Pc. Corridor Cpts. 5' 6"/27" bd.
 96 Only White Door Beds Rosemont Design.
 25 Only White Kitchen cabinet.
 4 Only White Kitchen Cabinet.
 47 Only White China Cabinet.
 21 Only White Kitchen Cabinet.
 47 Only White Kitchen Cabinet.

as are now in existence and which are located in the building known as the Granada Hotel, Chicago, Illinois.

In Witness Whereof, the said International and Industrial Securities Corporation has hereunto caused its corporate seal to be affixed and these presents to be 487-B signed by its Vice President and attested by its Secretary this 18th day of August, A. D. 1933.

International and Industrial
Securities Corporation,

By William E. Ford,

Vice President.

(Seal)

Attest:

G. E. Morrison,
Asst. Secretary

(Corporate Seal)

496

COURT TRUSTEE'S EXHIBIT O-3.

September 24, 1937

Granada Hotel Appraisal,
530 Arlington Place,
Chicago, Ill.

As per doc. 10161996 of the Recorders Office.

6828 Yds.	Carpet	@	25¢	\$1707.00
5415 Yds.	Osite	@	2¢ Sq. Yd.	108.30
110 White	Inadoor Beds	@	\$6.00	660.00
97 White	Kitchen			
	Cabinets	@	\$8.00	776.00
47 White	China			
	Cabinets	@	\$3.00	141.00
				<hr/>
				\$3392.30

As removal value for the year 1933 (purchase 1924).

J. A. Lenz,

Appraiser.

5074 Lincoln Avenue.

Signed, J. A. Lenz.

464-a

COURT TRUSTEE'S EXHIBIT R.

September 10, 1937.

Mr. Weightstill Woods Trustee,
Granada Apartment Hotel,
525 Arlington Street,
Chicago, Illinois.

Dear Sir:

In reference to the information, you desire, on the operating costs, at the Granada Apartment Hotel, 525 Arlington Street, Chicago, Illinois, for the Heating, Lighting, Power, Refrigeration, Hot and Cold Water expense and, the proper charge to the Arlington Apartment Hotel and Lincoln Park Manor Apartment Hotel for the service furnished them by the Granada Apartment Hotel, I beg to report as follows:

All costs given covering operations items are the average costs for 1935 and 1936 with corrections for present market prices.

Heating Costs are divided on a basis of square feet of radiation required to heat each building.

Refrigeration Costs are divided upon the cubic feet capacity of the Ice boxes in each building.

Hot and Cold water is proportioned by the number of apartments.

Appraisals made heretofore on the costs of installation are accepted and used by me in providing for Interest at 5% on cost, 15 years Amortization at 4.3%, maintenance and supplies at 5.7%, Total 15%.

Appraisals are as follows:

464-b Boiler installation, complete with all accessories	\$19,000.00
Water Pumps, Tanks, Heaters, etc.....	9,230.00
Refrigeration Plant complete	16,280.00
	<hr/>
	\$44,410.00

The Boiler Room equipment occupies 7990 Square Feet or 86,000 Cubic feet of space in building, which cost seventy cents per foot or \$60,200.00 less 24% depreciation leave a present value of \$45,752.00, 5% Interest on this item would be \$2,287.60 per annum.

No charge has been made to cover this in operating reports submitted but should be considered in fixing rates to the Arlington and Lincoln Park Manor Hotels. The split on this item would be:

Granada — 50%	\$1,143.80
Arlington — 29.76%	680.80
Lincoln Park Manor — 20.24%	463.00

Total	<hr/> \$2,287.60
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No charges have been made for line losses, this item being absorbed by the cost in operating room. On the basis of costs for the operation of the service as rendered, the proper charges to the Arlington and Lincoln Park Manor Hotel are as follows:

Arlington Apartment Hotel, \$9,857.03 per annum or an average of \$821.42 per month. Payments should be made upon a basis of \$1,067.05 per month for the months of January, February, March, April, October, November, December and, \$477.50 for the months of May, June, July, August and September of each year.

464-c Lincoln Park Manor Hotel, \$5,969.13 per annum or an average of \$497.44 per month. Payments should be made upon a basis of \$764.49 per month for the months of January, February, March, April, October, November and December and, \$263.54 per month for May, June, July, August and September of each year. If for any reason the Arlington Hotel should discontinue the Refrigeration Service they would be entitled to a credit of \$3,998.29 per annum or \$333.18 per month.

CONSOLIDATED COSTS.

	Granada	Arlington	Lincoln Park Manor	Totals
Refrigeration Service	4,796.18	3,998.29	1,986.65	10,963.14
Heating Service	5,777.83	4,126.88	2,806.63	12,711.24
Water Service	2,423.14	1,731.86	1,175.85	5,330.85
Granada House Lighting and Laundry	2,543.78			2,543.78
	\$15,540.93	\$9,857.03	\$5,969.13	\$31,549.01

REFRIGERATION EXPENSE.

Water—21.050 M. @ 6.8c....	1,431.40
Electric Power— 241.822.5 K.W. @ 1.6c....	3,869.16
Labor	1,230.00
Misc. Repairs	609.00
Insurance—Tax	393.00
15% on \$16,280.00 cost of plant to cover interest de- preciation, supplies and maintenance	2,442.00

Total Cost \$4,796.18 \$3,331.91 \$1,655.54 \$ 9,965.65

Remarks: 50% Boiler Boom Labor.

4% of total tax and insurance paid.

464-d Cost per annum \$6.63 per cubic foot, or \$33.15 for 5 foot Refrigerators and \$56.35 for 8.5 ft. Refrigerators.

	Granada	Arlington	Lincoln Park Manor	Totals
Expense divided on Basis of cubic ft. cap. of Ice Boxes.				
Granada—				
858 ft.—48.95%				
Arlington—				
486.5 ft.—33.434%				
Lincoln Park Manor—				
309 ft.—17.616%				
20% operating profit added to outside service	\$4,796.18	\$ 668.38	\$ 331.11	\$ 997.49
	\$4,796.18	\$3,998.29	\$1,986.65	\$10,963.14

HEATING EXPENSE.

Labor				1,230.00
Electric Power 31375 K.W. @ 1.6c				502.00
125907 Gal. #6 oil @ 4.75c..				5,980.58
Misc. Repairs				600.00
Insurance and taxes				393.09
15% on \$19,000.00 investment on Boiler Plant cover in- terest, dep. supplies and maintenance				2,850.00
	\$5,777.83	\$3,438.98	\$2,338.86	\$11,555.67
Expense divided on basis % cu. ft.				
Granada 50%				
Arlington 29.76%				
Lincoln Park Manor 20.24%				
20% operating Profit added to outside service		687.80	467.77	1,155.57
	\$5,777.83	\$4,126.88	\$2,806.63	\$12,711.24

464e Remarks: 50% Boiler Room Labor.

4% of total tax and insurance paid.

Cost per square ft. of Radiation required—424c per ft.

WATER-HOUSE SERVICE EXPENSE.

	Granada	Arlington	Lincoln Park Manor	Totals
8,764 M. gal. @ 6.8c per Mile				595.35
45618 gal. oil @ 4.75c.....				2,167.85
25124 K.W. @ 1.6c Power...				401.99
Misc. Repairs				100.00
Insurance and Tax.....				196.55
15% on \$9,230.00 cost of plant to cover interest deprecia- tion, suppls and mainte- nance				1,384.50
	\$2,423.14	\$1,443.22	\$ 979.88	\$4,846.24
Proportioned on same basis as Heating.				
20% operating profit added to outside service		288.64	195.97	484.61
	\$2,423.14	\$1,731.86	\$1,175.85	\$5,330.85

Remarks: 2% of total tax and insurance paid.

Cost of Water, Heating and Pumping 60.8c per M.

Granada Apartment Hotel

House Lighting, Elevator and Laundry
Power Not Included in Other Expense.

House Lighting

1,432,837 K.W. @ 1.6c	2,292.54
Elevated and Laundry Power 157025 K.W. @ 1.6c	251.24
	<u>\$2,543.78</u>

Respectfully submitted,

Wm. A. Schott,

Wm. A. Schott,

Consulting Engineer,

426 Diversey Parkway,

Chicago, Ill.

Phone: Bittersweet 4000.

2140

COURT TRUSTEE'S EXHIBIT R.

Memo of Understanding Between Chicago Trust Company
and Cody Trust Company In Re Granada Bond Issue.

(1) Chicago Trust Company to receive cash for all outstanding first mortgage items with past due interest figured at 6%, except that:

a. Its commission of \$10,000 on its two-fifths share of the new issue of \$500,000.00 first mortgage bonds is to be paid, \$2,000.00 in cash and \$8,000.00 in second mortgage bonds.

b. Any difference between the proceeds of the new first mortgage bond issue and the total amount remaining unpaid on the old loan (past due interest to be figured at 6%), premium, release fees, other charges incidental to the loan, and all charges against the Granada Hotel Corporation which may be a lien prior to the lien of the Trust Deed securing the new loan, is to be taken care of by the sixty day note of the Granada Hotel Corporation, endorsed by the Cody Trust Company, it being understood that the Cody Trust Company receive \$15,000.00 second mortgage bonds in lieu of their commission.

(2) It is understood that Cody Trust Company assume the responsibility for clearing title of liens prior to the new first mortgage.

(3) If a first chattel mortgage on the furniture cannot be delivered by February 9 as additional security for the new first mortgage bond issue, an amount of second mortgage bonds up to \$50,000.00, sufficient in the judgment of Chicago Trust Company and the Cody Trust Company to protect them in connection with such additional security, is to be left on deposit with Chicago Trust Company until such time as said first chattel mortgage is executed and delivered.

Chicago Trust Company,

By Dayton Kent,

Vice President.

Cody Trust Company,

By Lewis W. Riddle,

President.

883a COURT TRUSTEE'S EXHIBIT U.

884 This agreement, made and entered into this 1st day of October, A. D. 1927, by and between Granada Hotel Corporation, a corporation duly organized and existing under the laws of the State of Illinois, having its principal place of business at 525 Arlington Place, in the City of Chicago, County of Cook and State of Illinois, party of the first part, hereinafter sometimes referred to as Granada Corporation, and Frank E. Barton, owner and operator of the Arlington Hotel, of the City of Chicago, County of Cook, and State of Illinois, witnesseth:

First: Whereas, heretofore the party of the first part has furnished heat, hot water and refrigeration to the Arlington Hotel by means of the installation of heat, hot water and refrigerating systems belonging to the party of the first part and the piping equipment and appliances belonging to the party of the second part for the utilization of such heat, hot water and refrigeration, and the party of the second part is desirous of procuring heating, hot water and refrigeration from the party of the first part for the terms of years hereinafter set forth, and upon the price and terms hereinafter stated, to be furnished to apartment hotel building located upon the premises commonly known as 530-532 Arlington Place, the legal description of which said premises being follows:

Lot Thirty-four (34) and the East Eleven (11) feet of Lot Thirty-five (35) in the Subdivision of Out-Lot "C" of Wrightwood, being a subdivision of the Southwest Quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the Third Principal Meridian, in the City of Chicago, County of Cook and State of Illinois.

Second: Now, therefore, in consideration of the premises and the covenants and agreements herein contained, the party of the first part agree to furnish 885 heating from October 1st to April 30th in each year, and hot water and refrigeration continuously at all times to the said premises of the Arlington Hotel, Frank H. Barton, Owner, party of the second part, for a term of six (6) years from August 1, 1927, upon the terms and conditions herein set forth, and the party of the second part agrees to pay to the party of the first part, the sum of Nine Thousand Dollars (\$9,000.00) a year for each year of said term, for the said heating, hot water and refrigera-

tion, as follows: Nine Hundred Dollars (\$900.00) on the first day of the months of October, November, and December, 1927; nine Hundred Dollars (\$900.00) on the first day of the months of January, February and March in each and every year of said term; and Six Hundred Dollars (\$600.00) on the first day of the months of April, May, June, July, August and September in each year during said term to and including July, 1933, subject to the conditions herein set forth; the first monthly payment period to commence on the 1st day of October, 1927.

Third: It is further agreed in consideration of the premises that the party of the first part shall not be liable to furnish more, or different heat, hot water, or refrigeration to party of the second part than is adapted to the present installations of the party of the second part, and that is usual and customary for the character of the premises of the party of the second part now existing, and shall not be liable to furnish any more heat, hot water or refrigeration than has been furnished heretofore for the said premises.

Fourth: It is further agreed and understood that the party of the second part shall keep all its piping installations in perfect repair during the term, and it is further agreed and understood that the party of the first part shall not be liable for any failure to furnish such heat, hot water or refrigeration at any time during the term, except for its willful neglect to furnish the same, nor for any failure to furnish heating, hot water and refrigeration due to strikes, mechanical defects, or other causes not under the immediate control of party of the first part, and it is agreed and understood that party of the first part shall not be liable in any way for failure to furnish such heating, hot water and refrigeration due to any defects in the installations, equipment or facilities of the party of the second part, or the failure to keep the same in a good state of repair. It is further agreed and understood that in the event that party of the second part fails to keep its equipment and pipes in perfect condition for the furnishing of heat, hot water and refrigeration without wastage, that the party of the first part shall thereupon be relieved from all obligations to furnish such heat, hot water and refrigeration during all such times of this repair, but shall be entitled during all such times to the payments hereunder specified and to confess judgment therefore as herein stated, and it is further agreed that if such condition of disrepair shall continue for a period

of sixty days, that the party of the first part may then at its election declare this agreement terminated.

Fifth: In the event that party of the second part shall fail to make the payments or any of them herein reserved at the time specified and at the office of the party of the first part, and such default shall continue for thirty days, all obligations to furnish heat, hot water and refrigeration to party of the second part hereunder shall thenceforth cease and be determined at the election of the party of the first part. All payments hereunder may be made by check mailed to the office of party of the first part in Chicago.

Sixth: It is further agreed that party of the first 887 part shall furnish heat before October 1st or after April 30 of each year hereunder whenever it is generally furnished by other hotels of the same class in Chicago and whenever heat may be required to be furnished under the Ordinances of the City of Chicago. And it is further agreed that if party of the first part shall be unable to furnish heat for a time longer than a reasonable period necessary for repairs, etc., that party of the second part shall be entitled to a reasonable abatement or compensation to be paid by it for such period, and should such period extend over sixty days continuously, party of the second part may install its own system and this contract shall thereafter be null and void.

Seventh: If default be made in the payments or compensation hereinbefore reserved, or of any installment thereof as herein provided, the party of the second part does hereby irrevocably constitute any attorney of any court of record in this State, attorney for it and in its name, from time to time, to waive issuance of processes and service thereof, waive trial by jury, and to confess judgment in favor of the party of the first part or its assigns, and against party of the second part for the amount of payments or compensation which may be then due by virtue of the terms or conditions hereof or of any extension or renewals hereof, together with the costs of such proceedings and with reasonable solicitor's fees and for said purpose to file in said cause its cognovit thereof, and to make any agreement in said cognovit or elsewhere, waiving and releasing all errors which may intervene in any such proceedings, and waiving and releasing all right of appeal and right to writ of error, and consenting to immediate execution upon such judgment: and party of

the second part hereby confirms all that said attorney may lawfully do by virtue hereof.

Eighth: The obligation of party of the second part 888 to pay the compensation reserved hereby during the time hereof, or during any extension hereof shall not be deemed waived, released or terminated, nor shall the right and power to confess judgment given therein be deemed to be waived or terminated by the institution of any such action or by the confession or judgment therein.

Ninth: All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of the successors and assigns of both of the parties hereto.

In Witness Whereof, the said Granada Hotel Corporation, party of the first part, has caused this instrument to be signed in its behalf by its president or vice-president hereunto duly authorized, and has caused its corporate seal to be affixed hereto, and the said Frank E. Barton, party of the second part, has signed and sealed the same the day and year first above written.

Granada Hotel Corporation,
By Fred D. Mateer,
Its President.

Attest:

D. V. Ball,
Secretary.

Frank E. Barton.
(Seal)

Valuation: The Granada has been appraised by Chicago Trust Company and Cody Trust Company as follows:

Land	\$120,000
Building	680,000

Total	\$800,000
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In addition, and furnishing added security, the furniture and equipment in the Granada are valued at \$38,000.

959

COURT TRUSTEE'S EXHIBIT Y-1.

Cashier's Check
City National Bank
2-11 and Trust Company 2-11
of Chicago

Chicago, Ill. May 25, 1937 No. T15655

Pay to the order of Weithtstill-Wood, Trustee in Bankruptcy for Granada Apartments, Incorporated \$773.40.
Seven Hundred Seventy Three and 40/100 Dollars
Trust Department

A. Arneson
Countersignature

J. H. Bouht
Trust Officer Vice-President

960

COURT TRUSTEE'S EXHIBIT Y-1.

(Stamps)

Pay to the order of Harris Trust and Savings Bank, Chicago, Ill. (All Prior Endorsements Guaranteed.) 5847 Granada Apartments Inc., Debtor. Weightstill Woods, Trustee. 28. Paid through Chicago Clearing House P. M. May 28, 1937 to the Harris Trust and Savings Bank or pay to the order of any bank or banker. Prior endorsements guaranteed. 2-28. Harris Trust and Savings Bank, Chicago. 2-28.

961

COURT TRUSTEE'S EXHIBIT Y.

(Letterhead of Defrees, Buckingham, Jones & Hoffman).

Chicago, May 25, 1937.

Mr. Weightstill Woods
77 W. Washington Street
Chicago, Illinois

Dear Mr. Woods:

In Re: Granada Apartments, Inc.

We are advised by the City National Bank & Trust Company of Chicago that it has in its Trustee-in-Possession Account \$1273.40 and in its Commercial Account \$1107.60. It is transferring from the Trustee-in-Possession Account to the Commercial Account \$500.00, so that the bills which

you have okeyed for payment may be paid out of the Commercial Account and proper vouchers preserved. Deducting the amount of the bills from the funds on hand leaves \$773.40, for which we enclose Cashier's Check of the Trustee, payable to your order.

The check is sent and received by you with the understanding that it is without prejudice, either to you or to City National Bank & Trust Company of Chicago. We are sending it now because you have requested that we turn over the money rather than to send it after the account has been brought down to May 17, 1937, by Barrow Wade, of Guthrie, the Auditors. As soon as the account has been brought down, it is our intention to file it in court in the bankruptcy proceedings. By that time bills should have been received for every possible unpaid item. It is our thought that when the account is filed, the Court may direct that the Trustee-in-Bankruptcy assume payment of any proper bills not theretofore paid.

As to payroll, the Bank agrees to break that down as of May 15, 1937, the payroll from that date to be assumed by you.

692 Mr. Weightstill Woods

Page No. 2

5/25/37

I have talked to Mr. Hubbard, at the Bank, concerning an item of \$160.47, held in an account known as "Reserve Government Tax, Unemployment Compensation Fund." Mr. Hubbard says that the Bank will account for this item to the government; if this meets with your approval.

Will you please deliver the okeyed bills and checks to the bearer.

Yours very truly,

Defrees, Buckingham, Jones &
Hoffman

By Vincent O'Brien
Vincent O'Brien

VO'B:d

Encls.

(By Messenger)

1797

COURT TRUSTEE'S EXHIBIT AA.

193 Herrick Road
Riverside, Illinois
October 11, 1937

Mr. Weightsill Woods
Room 1714
77 W. Washington Street
Chicago, Illinois

Dear Sir:

You have handed me copies of five reports relative to costs of building heating, refrigeration and domestic water services for the Granada, Arlington and Lincoln Park Manor apartment hotels, and requested me to give you my comments and criticisms regarding these reports. You have also supplied me with information regarding the actual expenditures for 1935 and 1936 applicable to the expense of generating these services. The five reports were prepared, respectively, by Mr. Samuel R. Lewis, dated August 14, 1929; Mr. Irving L. Hertzman, dated December 23, 1933; Mr. Wm. A. Schott, dated September 10, 1937; Mr. Irving E. Brook, dated September 21, 1937; and Mr. O. W. Dauber, dated October 7, 1937.

Considering these reports in the order of their dates, my comments are as follows:

A—Samuel Lewis, 8/14/29

This report is in general an estimate as regards operating costs, and conveys the engineering judgment of Mr. Lewis in this respect.

(1) Investment costs omit cost of constructing that portion of building housing service equipment, which I estimate at \$61,920.00 based on 86,000 cu. ft. from Mr. Schott's report and a unit price of \$.72 per cu. ft. This price is above average cost of building because of extra depth and breadth of boiler room, which require more costly retaining walls and overhead beam construction, and represents the excess cost over a building with this volume of basement space omitted.

(2) Allowance for maintenance and supplies, 5.7% is high. Believe 4% is nearer correct.

(3) Estimate of fuel (oil and oil equivalent of coal) for building heating and domestic water heating is approximately 33% higher than used in 1936.

1798 (4) Electric power for fuel burner \$37.60. Would expect this to be at least 10 times as much.

(5) Ash removal—\$62.00. No ash now produced.

(6) Labor—\$5,520. This would be fair estimate if all of the wages of the necessary operators were allocated against services. Good management would use part of the time of these employees for other purposes. Would estimate \$3,300.00 (60%) applicable to services.

(7) Total cost—affected by above comments.

(12) & (13) Comment under (1) and (2) covers these items also.

(14) Estimate of total cost of water is lower than reported for 1936.

(15) Estimate of cost of power for water pumping, \$2,065.00, seems high. Would estimate not more than half as much.

(16) Estimate of quantity of hot water (391,000 gal.) is evidently a typographical error. Assuming that 3,910,000 gal. is intended this is low. Would estimate 12 gal. per fixture per day, or 5,334,000 gal. per year.

(23) & (24) Comments under (1) and (2) cover these items also.

General—No consideration is given to cost of taxes, insurance, depreciation and interest on value of building space occupied or reduced rental value of space abutting the service equipment rooms. I estimate these items to total \$8,074.00.

B—Irrving L. Hertzman 12/23/33

This report in general consist of summations of estimated portions of actual totals of certain classes of expenditure. Cost of electricity is obviously estimated too low.

No consideration is given to cost of taxes, interest, insurance or reduced rental value of space abutting service equipment rooms. I estimate these items to total \$8,441.00.

In each cost statement in this report an item of 20% of the cost allocated to the Arlington Hotel is set up to 1799 cover depreciation, overhead and profit. This is an incorrect treatment of depreciation, which is a fixed charge and should be considered separately. I estimate that depreciation should be \$3,861.00, based on 3% for building and 4.5% for equipment. The 30% portion of depreciation item, \$1,158.00, exceeds in each instance the amount set up for depreciation, overhead and profit.

Because of the limited market for this service, I believe

that the item of profit only should be not less than 20% of the total cost including depreciation. Should the customer cease to purchase service from the Granada Hotel it is improbable that a replacing customer could be obtained. In such case the burden of the fixed charges and operating labor normally assessed against this customer would fall entirely upon Granada. In the case of the Arlington, these amount to 30% of \$13,562.00, or \$4,069.00.

C—Wm. H. Schott 9/10/37

Allowance for maintenance and supplies, 5.7% is high. My experience indicates that 4% is nearer correct for this class of equipment.

Estimate of cost of constructing that portion of building which houses the service equipment is conservative. I believe it should be slightly higher because of the extra depth of boiler room, requiring more costly foundation and retaining walls and the width, which requires more expensive floor construction above. I can see no justification for reducing this building construction cost by 24% depreciation to obtain cost upon which to base the item of interest. This is doubtful accounting practice and is not in accordance with the custom of the Federal Income Tax Bureau.

No consideration is given to depreciation on the portion of building housing service equipment. My estimate for this item is \$1,858.00, based on a 3% depreciation rate on cost of \$61,920.00.

To check the division of costs in this report I have calculated the percentage allocation of costs to the Granada, Arlington and Lincoln Park Manor, based upon information contained in the various reports regarding radiation, water fixtures and refrigerators in the respective buildings, weighting each service with its approximate operating cost and find as follows:

1800	My Calculations	This Report
Granada	50.4%	50%
Arlington	30.3%	29.76%
Lincoln Park Manor	19.3%	20.24%

The total amount of insurance payments and taxes shown is \$982.73. This is low. My estimate is \$2,263.00, based upon a tax rate of \$.018 per dollar for \$106,400.00 and \$348.00 for proportionate part of fire and workman's compensation insurance and all insurance on boilers and refrigerating equipment.

This report sets up a flat rate of 5.7% to cover cost of maintenance and supplies and in addition sets up items totaling \$1,300.00 for miscellaneous repairs.

Maintenance and repairs are generally considered synonymous and to some extent these items are duplicate charges.

No consideration is given to the reduction in rental value of space abutting the service equipment rooms because of noise of machinery and heat emanating therefrom. I am advised that there are eleven units in this category, with a total present rental value of \$6,000.00 per year. I estimate these units are adversely affected to the extent 12.5% of their value. This item of loss, therefore, is \$6000—6000

—\$857.

.875

Other than noted above the operating costs set up seem reasonable.

Modifying the results in this report by the above comments gives comparative results as follows:

	Mr. Schott's Report	My Estimate
Total operating expense (profit omitted)	\$26,367.56	\$31,880.00
Allocated to Granada	12,997.15	16,067.00
Allocated to Arlington	8,214.11	9,660.00
Allocated to Lincoln Park Manor..	4,974.28	6,153.00

To the amounts allocated to the Arlington and Lincoln Park Manor should be added a fair profit. Because of the limited market for these services and the relatively large part of the annual costs represented by fixed charges, I believe that this should be not less than 20% of the total annual cost.

1801 D—Irrving E. Brooke 9/21/37

This report contains an estimate of the investment cost of a suitable service plant for the Arlington Hotel and an estimate of the annual cost of operating such a plant.

(A) Construction and Installation Cost, Heating System

(6) Foundations—Estimate is low. \$250.00 would be nearer cost.

(7) Stack. Estimate is fair for stack delivered to site.

Cost of erection in existing building would probably be \$300.00.

Estimate includes stocker which infers use of coal as fuel. Estimate makes no provision for construction of coal bin.

Estimate makes no provision for construction of basement space for this equipment, nor does it make allowance for use of first floor space if equipment is to be located thereon. The cost of a suitable basement room to house the service equipment described in this report would be approximately \$12,000.00, if constructed so as to avoid undue interference with the normal operation of the hotel.

(B) Operating Expense

(B-1) Fixed charges

Fixed charges are set up at 15%. This is high. A fair figure would be 12%.

(B-2) Operating charges.

Labor and attendance, \$300.00. This is a very low estimate for a heating plant using coal fuel, even considering part time attendance. Based on attendance at \$1.00 per hour I estimate this item at \$800.00.

Water Supply System

See comments regarding cost of providing space, under "Heating System".

(1) Water Heater. Estimate does not indicate type of fuel for this heater and makes no provision for storage of fuel.

(11) Electric Wiring, \$125.00. This estimate is 1802 too low for wiring four pumps. \$250.00 would be nearer correct.

Fixed charges are too high. Interest 5%, depreciation 4.5% and taxes and insurance at 2.5% are adequate.

Electric current, \$125.00. Believe \$175.00 would be nearer correct.

No allowance has been made for fuel for water heating. If coal is used this item would be approximately \$350.00.

Labor and Attendance, \$50.00. This estimate is very low. My estimate for labor at \$1.00 per hour is \$365.00 per year.

Refrigerating System

Fixed charges 15% are too high. 12% is approximately correct.

Electric current, \$200.00. This estimate is very low. Based on 50% load factor this cost would be approximately \$750.00.

Water, \$175.00. Believe this estimate is too low. \$300.00 would be nearer correct.

Repairs and maintenance, \$50.00. This is too low. This class of machinery will average 4.5% of cost for repairs and maintenance, or \$157.00.

Labor and attendance, \$25.00. Believe this estimate should be not less than \$90.00.

Based on the foregoing comments the total annual operating expense of this project would be \$8,539.00, compared with \$5,405 shown in the report.

O. W. Dauber 10/7/37

This report deals with operating costs stated to be a matter of record.

Some criticism might be offered as to division of these costs between the various services, but corrections of this nature would have little effect upon the conclusions given in the report.

Fixed charges of 11.5% (interest 6%, depreciation 3%, insurance and taxes 2.5%) have been applied to cost of service equipment only. I believe that fixed charges 1803 of 12% (interest 5%, depreciation 4.5%, insurance and taxes 2.5%) are more nearly in line with prevailing practice in respect to service equipment, and 10.5% in respect to buildings of the character of the Granada Hotel.

This engineer has entirely neglected consideration of the cost of that part of the building which houses the service equipment.

My estimate of the excess cost of constructing the basement space housing the service equipment is \$61,920.00 as explained earlier in my report.

No consideration has been given to the reduction in rental value of space abutting rooms housing service equipment. I am advised that there are eleven units in this category, with a total present rental value of \$6,000.00 per year. I estimate that these units are adversely affected to the extent of 12.5% of their value. The loss, therefore, is $\$6000 - 6000 \times .125 = \875.00 .

Giving consideration to the above mentioned items, the costs in the report of Mr. Dauber would change as follows:

O. S. Dauber 10/7 37		With Added Costs	
Total	Allocated to Ar- lington	Total	Allocated to Ar- lington
Heating\$ 8,964	\$2,555	\$11,835	\$3,373
Refrigeration .. 8,413	2,860	10,775	3,663
Hot water 3,235	983	3,844	1,169
Cold water 1,761	535	2,514	764
Total\$22,373	\$6,933	\$28,968	\$8,969

The report states that "a profit of 10% could reasonably be charged". Because of the limited market for this service and the improbability of obtaining new customers should a customer cease to purchase this service, I believe a profit of 20% is justified.

General

All of the reports examined have failed to give adequate consideration to the cost and fixed charges thereon of the building space in which the service equipment is housed.

All reports have failed to give any consideration to the detrimental effect of service equipment operation 1804 upon adjacent rental space.

1805 I am not qualified to give expert advice upon this point but have included in the foregoing comments this item, evaluated according to my small experience in this respect.

Respectfully submitted,

W. R. Loveless.
W. R. Loveless.

WRL/JW

1825-A COURT TRUSTEE'S EXHIBIT BB.

Comparison

	Schott		Dauber	Difference
Refrigeration	\$10,961.70		\$8,413.00	\$2,548.70
Water		Short	610.40	
Power		Over	227.28	
Repairs		Short	200.00	
Ins. & Tax		Over	13.91	
Int. Dep. Maint. & Amorz.		Short	977.00	
Op. Profit		Short	997.49	
	Shortage		2,784.89	
	Overage		235.29	
	Net Shortage		\$2,549.60	= Out 90c
Heating	\$12,394.96		\$8,964.00	\$3,430.96
Labor		Short	246.00	
Fuel		Short	650.58	
Power		Short	99.02	
Repairs		Short	250.00	
Ins. & Taxes		Over	81.91	
Int., etc.		Short	1,140.00	
Op. Profit			1,127.27	
		Shortage	\$3,512.87	
		Overage	81.91	
			\$3,430.96	bal.
Water	\$5,321.96		\$4,996.00	\$ 325.96
Water		Over	643.15	
Labor		Over	246.00	
Power		Over	59.68	
Fuel		Short	287.85	
Ins. & Tax		Over	33.45	
Int., etc.		Short	554.50	
Op. Profit		Short	484.61	
		Short	1,326.96	
		Over	982.28	
			\$344.68	Out \$18.72
P.S. Oil Used	171.525 gals.			
Estimated	161.700			
Shortage	9.825			

1877 COURT TRUSTEE'S EXHIBIT 2.

The Arlington, Inc.
Second Floor
208 So. LaSalle St.
Chicago

September 29, 1937

Weightstill Woods, Esq.,
77 West Washington Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Dear Mr. Woods:

We understand you have requested payment of an additional \$1,000 on account of services being furnished by the Granada to the Arlington.

Your petition for instructions from the court as to the amount to be collected for services used and to be used is pending on hearing before Judge Barnes.

Until it is determined we are willing to continue payments on a month to month basis at the rate of \$600 per month for services used, such payments to be without prejudice and to be subject to adjustment to conform to the ultimate finding as to the amount to be charged.

If this meets with your approval, please let us know and we will make remittance on this basis.

Very truly yours,

The Arlington, Inc.

By W. G. Sturm,

W. G. Sturm,

Vice-President.

WGS:MG

CITY NATIONAL EXHIBIT 1.

January 15, 1932, decree entered.

The material portions of the decree follow:

Cause having been brought on to be heard upon the petition of Albert Pick & Company and the supplemental petition of International and Industrial Securities Corporation, the answers thereto of Chicago Title and Trust Company, receiver, Chicago Trust Company, as trustee under Document 10161996, and of William Thuma and Chicago Trust

Company, as trustee under Document 10162332, the court finds:

1. That it has jurisdiction of the subject matter and of the parties aforesaid.

2. That Albert Pick & Company is a corporation organized under the laws of the State of Illinois, having its principal office in the City of Chicago and is and was prior to the filing of its petition engaged in the business of selling furniture, furnishings and equipment for hotels, etc.

3. That on August 20, 1924, Granada Hotel Corporation owned in fee simple the real estate at 525 Arlington place, Chicago, Illinois; that on said date, said premises had just been improved with a large hotel building; that Granada Hotel Corporation purchased from Albert Pick & Company for \$107,096.84 all or most of the furniture, furnishings and equipment for said building and paid on account of the purchase price \$24,000 in cash and made, executed and delivered to Albert Pick & Company 31 promissory notes dated August 20, 1924, aggregating \$83,096.84, bearing interest at 7 per cent per annum, and payable note No. 1 December 19, 1924 notes No. 2 to No. 30 one each month on the 1st of each and every month in numerical order commencing with note No. 2 due October 1, 1924; and continuing through note No. 31 which was due March 1, 1927.

4. That to secure the said notes, Granada Hotel Corporation made, executed and delivered its chattel mortgage to Albert Pick & Company dated August 20, 1924, acknowledged on the 29th day of August, 1924, by its president and secretary, and acknowledged also before the clerk of the Municipal Court of Chicago and filed on the date last aforesaid for record in the recorder's office of Cook County, Illinois, as Document 8570591, conveying such of the goods and chattels located in said hotel premises more particularly described later in said decree), and that said chattel mortgage was duly and properly extended and renewed by the affidavit of the mortgagor and mortgagee in accordance with the laws of the State of Illinois.

5. That on May 19, 1928, Granada Hotel Corporation owed on account of the principal of the aforesaid notes \$54,173.45, with interest up to March 27, 1928, of \$14,469.82; that notes 1 to 6 had been paid but that on May 19, 1928, notes 8 to 31, both inclusive, were in default by their terms and under the terms of said renewal, and that said chattel mortgage was and is a part purchase money chattel mortgage.

6. That on May 19, 1928, Albert Pick & Company filed

in the Circuit Court of Cook County in Case No. B-162869 a bill to foreclose said chattel mortgage; that summons issued therein, was duly served on Granada Hotel Corporation on May 30, 1928; that said corporation filed its appearance and answer the cause was referred to a master in chancery, evidence was taken and the master rendered his report on November 13, 1928, upon which a decree was entered in said cause finding the averments of the bill of complaint therein to be true and finding due Albert Pick & Company \$71,437.65 with costs and expenses of said proceeding and finding that no other person had or claimed any right, title or interest in and to the "premises" involved therein paramount and superior to the rights of Albert Pick & Company and that the property should be sold to satisfy the amount found due.

7. That said decree further provided that upon sale, Granada Hotel Corporation and all persons claiming by, through or under them should be forever barred and foreclosed of any claim of, in and to said personal property, and that upon execution and delivery of bill of sale the grantee should be let into possession of said personal property and that all persons parties to the cause who might be in possession thereof and all persons who since the commencement of said suit should have come into possession under them, or any of them, should on production of said bill of sale at once surrender possession, in default of which a writ of assistance should issue.

8. That Eloy Wenstrand asserted some claim by virtue of an assignment to him on August 25, 1928, of the right, title and interest in and to said personal property acquired by Lynch Clarisey Company by reason of a sheriff's sale held July 17, 1928, under an execution on a judgment in favor of Lynch Clarisey Company, individually, and against Granada Hotel Corporation; that said Wenstrand on November 23, 1928, filed a bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, to restrain said master in chancery of the Circuit Court and said Albert Pick & Company from proceeding with the sale by said Circuit Court decree ordered and that said sale had been published for and was to have been held on November 24, 1928.

9. That said bill in the District Court of the United States was dismissed for want of equity and that the decree dismissing it was affirmed by the Circuit Court of Appeals for the Seventh Circuit, and that a petition for writ of certiorari to the Supreme Court of the United States to re-

view said decision was on June 2, 1930, denied and a mandate issued by the said Circuit Court of Appeals directing that the Wenstrand bill be forthwith dismissed; that pending said federal court litigation, a temporary restraining order was issued by the District Court of the United States aforesaid, whereby said master in chancery and said Albert Pick & Company were restrained from selling the said personal property under said Circuit Court decree and that by reason of said restraining order they were prevented from proceeding with the said sale for a period from November 23, 1928, to June 4, 1930.

10. That upon the issuance of said mandate, Albert Pick & Company again published for the sale, in accordance with said Circuit Court decree, which sale was held on June 11, 1930, and Albert Pick & Company bid in the said personal property by its said chattel mortgage sold and conveyed for the sum of \$20,000, and that International and Industrial Securities Corporation, as assignee of Albert Pick & Company, is now the sole owner of said chattel mortgage property and entitled to immediate possession thereof.

11. That on June 14, 1930, a decree was entered in said Circuit Court proceeding confirming the master's report of sale and distribution and allowing Albert Pick & Company judgment for \$58,079.44 against Granada Hotel Corporation, and that on June 11, 1930, the said master in chancery executed and delivered to Albert Pick & Company a bill of sale conveying to it such of the property located on the premises at 525 Arlington place, Chicago, Illinois, as is described as follows, to wit:

(Here is set forth detailed description of the chattel mortgage property; including the carpets, qzite, in-a-dor beds, kitchen cases and china cases claimed by the respondents to be fixtures and part of the realty); and that International and Industrial Securities Corporation, as assignee of Albert Pick & Company is the owner and holder of said bill of sale and the owner of said chattel mortgage property and entitled to the possession thereof.

12. That on June 10, 1930, William A. Thuma exhibited his bill in chancery herein to partially foreclose a junior mortgage on the real estate at 525 Arlington place, Chicago, Illinois, and on June 11, 1930, on his motion, Chicago Title and Trust Company was appointed receiver for the said real estate; that on June 11, 1930, Albert Pick & Company demanded from Chicago Title and Trust Company the return of the chattel mortgage property, which demand

was refused and is still refused, except as thereafter found in said decree.

13. That on June 24, 1930, an order was entered herein on Chicago Title and Trust Company directing it to surrender to Albert Pick & Company all of the property described in its said chattel mortgage and in its possession, excepting the following described property:

325 yds	$\frac{3}{4}$ "	Spec. Axminster cpt for apt.
85 "	$\frac{5}{8}$ "	6" wide spec. Axminster cpt for corridor.
625 "	$\frac{3}{4}$ "	Spec. Ax. Cpt to cover apt.
575 "	$\frac{3}{4}$ "	Spec. Vel Cpt to cover Apt.
197 "	$\frac{3}{4}$ "	Spec. Axm. Cpt to cover Apts.
625 "	$\frac{3}{4}$ "	Spec. Axm. Cpt to cover Apts.
575 "	$\frac{3}{4}$ "	Spec. Velv Cpt to cover Apts.
124 "	$\frac{5}{8}$ "	6" Spec. Ax. Cpt for corridor.
945 Sq yds	$\frac{3}{4}$ "	Ozite for all corridor.
4470 Sq yds	$\frac{1}{4}$ "	Thick Ozite for all rooms.
2 Pc.		Corridor Carpet 5' 6"/27" end. Bd.
14 Only		White Door Bed.
235 yds	$\frac{3}{4}$ "	Spec. Vel. Cpt for apts.
197 yds	$\frac{3}{4}$ "	Spec. Ax. Carpet.
124 yds	$\frac{5}{8}$ "	6" wide spec. Ax. Cpt.
197 yds	$\frac{3}{4}$ "	Spec. Ax. Cpt.
625 yds	$\frac{3}{4}$ "	Spec. Ax. Cpt.
575 yds	$\frac{3}{4}$ "	Spec. Vel. Cpt.
124 yds	$\frac{5}{8}$ "	6" wide spec. Axm. Cpt.
197 yds	$\frac{3}{4}$ "	Spec. Axm. Cpt.
625 yds	$\frac{3}{4}$ "	Spec. Axm. Cpt.
575 yds	$\frac{3}{4}$ "	Vel. Cpt.
124 yds	$\frac{5}{8}$ "	6" wide Spec. Ax. Cpt.
16 Pc.		Corridor Cpts. 5' 6"/27" bd.
96 Only		White Door Beds Rosemont design.
25 Only		White Kitchen cabinet.
4 Only		White Kitchen Cabinet.
47 Only		White China Cabinet.
21 Only		White Kitchen Cabinet.
47 Only		White Kitchen Cabinet.

as to which jurisdiction is reserved by the court to determine whether or not Albert Pick & Company is entitled to possession thereof, and that Albert Pick & Company did in accordance with said order remove from said premises all of the property in said order directed to be surrendered to said Albert Pick & Company.

14. That said receiver has had possession of the property in said order of June 24, 1930, directed to be surrendered from the date of its appointment to the date of

removal and is now in possession and has been in possession since its appointment of the property aforesaid alleged to be fixtures and part of the real estate, except such portion of the carpet as was repossessed by Albert Pick & Company pursuant to said order of June 24, 1930.

15. That the trust deed sought to be partially foreclosed in this proceeding is dated September 1, 1928, and was not recorded until October 1, 1928, and that it conveys as security for the indebtedness therein described the right, title and interest of Granada Hotel Corporation in and to the said real estate and premises, together with any and all fixtures that might then be in any building or might be placed in any building then or thereafter standing on said premises, together with all rents, issues, income and profits which should thereafter accrue from said premises which were assigned and transferred to said trustee.

16. That said trust deed last aforesaid was made and recorded almost four years after the recordation of the said chattel mortgage and was made and recorded after the bill of complaint of Albert Pick & Company to foreclose its chattel mortgage had been filed as aforesaid, and after complete lis pendens had attached, and that said trust deed is in all respects subject and subordinate to the bill of sale issued in said Circuit Court proceedings aforesaid.

17. That Chicago Trust Company took from Granada Hotel Corporation a chattel mortgage dated January 12, 1925, granting, conveying and selling to Chicago Trust Company certain goods and chattels, including all of the property alleged to be fixtures and part of the real estate as hereinabove set forth, and that in and by said chattel mortgage it was provided that the goods and chattels therein conveyed were free from all encumbrances, except such purchase money chattel mortgages as might have been therefore duly executed and entered of record.

18. That the said real estate and premises are improved with a building containing 206 rooms operated as an apartment hotel, containing apartments consisting of one, two, three and four rooms of the Pullmanette and dining kitchen type.

19. That the mortgage sought to be partially foreclosed herein and recorded as Document 10162332 and the first mortgage trust deed recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996 were made to secure the indebtedness therein respectively described, which indebtednesses were incurred by Granada Hotel Corporation through loans made for the purpose of paying

in full, at a premium as provided in said trust deed, the then unpaid balance of the indebtednesses respectively secured by a first and second mortgage on said premises made in 1924, the said 1924 first mortgage having been recorded in the Recorder's Office of Cook County, Illinois, as Document 8284566, and the 1924 second mortgage having been recorded in said office as Document 8295914; that said new loans evidenced and secured by the present first and second mortgages aforesaid were made at the special instance and request of the Granada Hotel Corporation as owner and were to be respectively secured by first and second mortgage liens upon said premises; that the proceeds of said new loans evidenced and secured by the present first and second mortgages aforesaid were used to pay, at the premium provided for in the 1924 trust deeds, the then unpaid evidences of indebtedness respectively secured by the 1924 trust deeds aforesaid; that the 1924 mortgages aforesaid were recorded as Documents 8284566 and 8295914 prior to the recordation of the chattel mortgage held by Albert Pick & Company as aforesaid; that the proceeds of the loans respectively secured by said trust deeds recorded as documents 10162332 and 10161996 respectively, being the present second and first mortgage trust deeds respectively, were disbursed and paid long after the aforesaid chattel mortgage from Granada Hotel Corporation to Albert Pick & Company had been recorded in the Office of the Recorder of Cook County, Illinois, and after a complete *list pendens* had attached under the suit brought by Albert Pick & Company in the Circuit Court of Cook County, Illinois, as aforesaid.

20. That the said trust deeds Documents 8284566 and 8295914, being the aforesaid 1924 mortgage trust deeds respectively, were made to secure loans; the proceeds of which were used and disbursed in and about the erection of the improvement upon the said real estate and premises; that the said improvement was designed and built to contain Pullmanette apartments and was planned to accommodate kitchen cases, china cases, carpet and in-a-dor beds similar in type to those sought to be recovered by Albert Pick & Company; that all of the said carpet was made, sewed and measured to fit the various rooms and corridors in and about the improvement on said premises; that in the laying of said carpet a material known as ozite and first placed over the rough cement floor of the corridors and apartments, which floor was otherwise left unfinished. The said ozite was not fastened to the floors

or the building in any manner whatsoever, except that it was glued to said floors only at the seams with a starchy substance known as dextrine and that the said carpet was laid over the ozite and nailed to wooden strips designed for the purpose of nailing carpets thereto; that said wooden strips were sunk into the floor along the walls of said apartments and corridors and that said ozite and carpets can be removed without injury either to the ozite and carpet itself or to the floors or any part of the realty; that the in-a-dor beds claimed by the petitioner were regular stock in-a-dor beds and were not made or constructed specially for the order of Granada Hotel Corporation; that said beds were installed in certain of the rooms in and about said premises at the time of the erection of said building; that each of said beds is attached to a door which is suspended on a perpendicular set in two pivots, one placed in the cement floor and the upper one in the upper portion of the door frame, to which perpendicular is attached a wooden panel, which, when the bed is closed and not in use, forms part of the wall of the room; that metal sockets were screwed to the doors and in-a-dor beds placed in said sockets; that the beds can be removed by merely lifting said beds about 2 inches and removing them from said sockets and without causing any injury to said beds or to the doors or to any part of the said realty; that immediately adjacent to each side of the panels is a door, each of which doors opens into a cloak room in which the bed hangs suspended when not in use, and that the said doors were designed to accommodate the type of in-a-dor beds installed, but that other in-a-dor beds could have been and still can be procured in lieu of the in-a-door beds claimed by the petitioner herein.

21. That the kitchen cabinets claimed by the petitioner were regular stock cabinets and were not made or constructed specially to the order of Granada Hotel Corporation. The said kitchen cabinets were placed on rough wooden blocks on the unfinished concrete floor of the kitchens in said building and were not attached or fastened to the floors in any manner. Several inches of space were left between the sides of said kitchen cabinets and the walls adjacent to said sides. The said cabinets consist of an upper and lower portion, the upper portion containing a board on the bottom and various compartments, and the lower portion containing drawers and compartments; that in one end of the lower portion, refrigerator coils are located, which coils are attached by pipes to the main

pipes, installed in and about the premises carrying supplies of brine to and from the respective coil in said cabinets; that said connections were made from the rear of the cabinets toward the leads and drains; that said leads and drains are insulated; that the spaces between the sides of the kitchen cabinets and walls adjacent to said sides were covered with scribing boards wedged in between the sides of the said cabinets and the walls adjacent thereto.

22. That the china cases sought to be recovered by the petitioner are placed in certain rooms of said building, two to a room, and are placed immediately between the kitchen and dining portion of the dining kitchen and are also placed on the rough concrete floor; that in each room where said china cases were placed one was so placed as to conceal the kitchen sink and the other to conceal the gas range from the dining portion of the particular apartment; that said china cases were regular stock china cases and were not made or constructed specially to the order of Granada Hotel Corporation; that they were attached to the floor by nails driven through the bottom of said china cases to wooden nailing strips and were attached to the walls adjacent to their sides by nails driven through said sides into wooden nailing strips in said walls and that all of said china cases can be removed without injuring said china cases or the walls, floors or any part of said realty.

23. That Chicago Trust Company made and delivered its check dated December 31, 1924, for \$7,000 payable to the order of Albert Pick & Company as a payment to Albert Pick & Company to apply on account of the purchase price due it for the property sold to Granada Hotel Corporation and that said check was paid out of the proceeds of the loan made by Chicago Trust Company to Granada Hotel Corporation secured by the aforesaid 1924 trust deeds.

24. That neither Chicago Trust Company as trustee under said new first mortgage, nor the holders of the evidences of indebtedness by said trust deed described are subrogated to the rights of the trustee under the former first mortgage aforesaid, or to the rights of the holders of the evidences of indebtedness by said former first mortgage secured, and that the rights of the holders of the evidences of indebtedness described by the said former first mortgage made in 1924 are subject and inferior to the rights of the said petitioner in and to all of the chattel mortgage property aforesaid.

25. That Albert Pick & Company and Granada Hotel Corporation expressly agreed that all of the property described in and conveyed by the said chattel mortgage should remain personal property and that said agreement is binding upon all parties hereto, and that none of said chattel mortgage property was so annexed or affixed to the building or adapted to or necessary for the use of the building as to make it part of the realty contrary to said agreement.

26. That all of the parties hereto are bound in all respects by the decree entered by the Circuit Court of Cook County, Illinois, as aforesaid.

It is, therefore, ordered, adjudged and decreed that said receiver forthwith surrender to International and Industrial Securities Corporation all of the property described in and secured by the said chattel mortgage to Albert Pick & Company remaining in and about the premises commonly known as 525 Arlington place, Chicago, Illinois.

The court retains jurisdiction of the parties for the purpose of hearing and determining the question as to what compensation is to be paid by the receiver for the use of any of the aforesaid property described in said chattel mortgage.

682

CITY NATIONAL EXHIBIT NO. 2.

Samuel R. Lewis
 Consulting Mechanical Engineer.
 407 S. Dearborn Street, Chicago
 Telephone, Wabash 6675

January 31, 1934

Memorandum

Re: Granada, Arlington and Lincoln Park Manor.

Arlington now pays \$940.00 per months \$11,280.00
 Lincoln Park Manor now pays \$635.00 for 6 mos.
 \$466.00 for 6 mos. 6,610.00

Actual fuel cost	1931	\$6970.00
Heating and hot water heating	1932	6494.00
	1933	7066.00
		<u>\$20530.00</u>

3 = \$6843.00 average

Granada	114 units	
Arlington	91 units	
Total lights, plus power at Granada		\$6892.00
Lights and elevator at Arlington		\$2400.00 = \$26.44 per unit

91

Granada 114 units x \$26.44 = \$3014.00 Granada lights and elevators.

\$6892 - \$3014 = \$3878.00 cost of power at Granda for all three buildings.

August 14, 1929

Cody Trust Company
105 So. LaSalle St.
Chicago, Illinois.

Gentlemen:

You have asked us to report on the cost of operation of the Granada-Arlington-Lincoln Park Manor group of hotels.

As we are advised, you wish to know the unit cost for operating the project as a whole and the same unit cost as applied to each of the three buildings, in order that an equitable charge for service of heating, hot water and refrigeration may be established for each of the three hotels.

In our judgment it is feasible, lacking exact material knowledge, to apportion the costs to the following basic heads:

Heating: Square feet of radiation

- (a) Interest, Depreciation, Supplies and Maintenance.
- (b) Fuel
- (c) Power for Fuel Burner
- (d) Ash Removal
- (e) Labor

Water:

- 1. Refrigerating Machine Condenser
- 2. One Apartment Unit consisting of Kitchen and Bathroom
 - (a) Interest and Depreciation, Supplies and Maintenance on that part of the plant which serves all three buildings.
 - (b) Cost of Water
 - (c) Cost of Pumping
 - (d) Cost of heating the hot water

Refrigeration: Ice Box

- (a) Interest and Depreciation, Supplies and Maintenance on that part of the plant which serves all three buildings.
- (b) Condensing water.
- (d) Electric Power

We will count the engineer's labor all with the heating as it is difficult to apportion any particular percentage to the water or to the refrigeration, and the spread should be as fair by the heating unit as by any other unit.

684 In the light of these premises we arrive at the three unit costs for the complete plant as follows:

Heating.

1. Investment cost of boilers, oil burners, tanks and chimney in Granada.....	\$19,000.00
2. Per year interest, depreciation, maintenance and supplies	
Interest at 5%	
15 yr. amortization at 4.3%	
Maintenance and supplies at 5.7%	
Total 15% on above.....	\$ 2850.00
3. Per year—Cost of oil, 141,926 gals. at .041	\$6,031.85
Pr Yr. Cost of Coal, 247.5 tons at \$6.50	1,608.75
Total	7640.60
(less cost of water heating, line 14 which has been deducted:)	
4. Per Yr.—Power for fuel burner 2150 Kw. Hr. @ \$.0175	37.60
5. Per Yr. — Ash Removal.....	62.00
6. Per Yr. — Labor (12 mos. @ \$410.00) (4 mos. @ 150.00)	5520.00
7. Total Annual cost of heating.....	16110.20
8. This divided by 32,100, the total number of sq. ft. of radiation in all three buildings, gives a unit cost per sq. ft. of radiation of	0.501875

The cost of heating each of the three buildings therefore is:

9. Granada	—17,500 sq. ft.....	8782.84
10. Arlington	— 8,500 “ “	4265.91
11. Lincoln Pk. Manor—	6,100 “ “	3061.45
Total—same as (7)		16110.20.

Water.

12. Investment cost of water pumps and water heaters in Granada	9230.00
13. Per Yr. Interest, depreciation, supplies and maintenance on above at 15%	1384.50

684-1

14.	Per Yr. Cost of one half of water purchases. (The other half is charged to refrigeration	\$ 993.38
15.	Per Yr. Cost of pumping water..... There are three pumps with 45 H.P. connected load. We assume a load factor of 40% and compute the power at \$.0175 per K.W.	2065.00
16.	Per Yr. Cost of heating water..... This is estimated at 391,000 gals. from 40 to 180 degrees using oil having 148,675 B.t.u. per gal. at 80% efficiency, costing .04½c per gal. This sum was deducted from item (3).	1962.02
17.	Total Annual cost of Water.....	6404.90
18.	This divided by 253, the equivalent total number of water using units in all three buildings, gives a cost per unit of	25.3158
19.	We have checked the plans and the buildings carefully, and find that the water-using units, each unit consisting of a bathroom with tub, a kitchen, lavatory and toilet, are as set forth below. We show also the cost for each building:	
20.	Per Yr. — Granada — 109 equiv. units cost	2759.42
21.	Per Yr. — Arlington — 86 equiv. units cost	2177.16
22.	Per Yr. — Lincoln Pk. Manor — 58 equiv. units cost	1468.32
Total—Same as (17).....		<u>\$6404.90</u>

No account is taken of the small volume of water used for make-up in the boilers, as it is infinitesimal in proportion. There are separate laundries, so that we seem reasonable fair in dividing the water-cost in proportion to the basic units.

684-2

Refrigeration

23. Investment cost of the apparatus in The Granada, consisting of compressor, condenser, brine coolers, pumps, tanks, etc. but not including the individual refrigeration or ice boxes	\$16,280.00
24. Per Yr. Interest, depreciation, supplies and maintenance on above at 15%	2,442.00
25. Cost of condensing water, per yr.	993.38
26. Per Yr. cost of electricity for compressor and for brine pumping @ \$.0175 per Kw.	4,375.00
27. Total annual cost of refrigeration	7,810.38
28. This divided by 226, the total number of ice box units in all three buildings, gives a cost per unit of	34.559
29. We have checked the plans and the buildings and find that the ice box units are as set forth below. We show also the cost for each building:	
30. Granada—96 ice boxes cost	3,317.68
Arlington—77 ice boxes cost	2,661.06
Lincoln Park Manor—53 ice boxes cost..	1,831.64
Total (same as 27)	7,810.38

Based on these figures, the cost of the heating, water and refrigeration service to each of the three buildings is as follows:

31. Granada	\$14,859.94
32. Arlington	9,104.13
33. Lincoln Park Manor	6,361.41

If these three buildings are to be operated as separate entities and the Granada is to furnish service as a landlord to the Arlington and Lincoln Park Manor, something more than the bare cost of furnishing the service should be paid by the tenants.

684-3 It must be admitted that administrative costs in accounting, purchasing, etc. and some hard-to-estimate costs for the trouble of looking after the mechanical equipment of the tenant will accrue to the Granada in case it furnishes service, which would not accrue if it were separate.

The existing boiler and machinery equipment in the

Granada also would last longer if used at light load for the Granada alone than if compelled to serve also the Arlington and the Lincoln Park Manor, though the exact dollar value of both administrative and wear and tear items is difficult to estimate.

In lieu of such estimate, however, the tenants should admit in equity that they ought to pay any landlord enough beyond the bare cost to him of the service which he renders, to make him solicitous for their comfort and happiness.

A fair way to arrive at this purchase price for good will would be to pay a percentage of the cost in excess thereof. Any contractor expects at least a 20% margin over bare cost, when he carries out a fixed-price contract and assumes the burdens of maintenance, accidents, etc. On this basis the

34. Arlington, with a cost of \$9104.13 would
pay to the Granada \$10,924.95

35. The Lincoln Park Manor, with a cost of
\$6,361.41 would pay to the Granada 7,633.69

Yours respectfully

SRL-IH

(signed) Samuel R. Lewis.

684.4

Lincoln Park Manor

To visualize the cost to the tenants, in case they should elect to install and to operate their individual plants, we suggest the following as a fair tabulation:

36. Investment by Lincoln Park Manor.

(a) New Chimney and Supports	\$4500.00
(b) Boilers and Piping	3500.00
(c) Boiler pit and foundations	1500.00
(d) Oil burners and tanks	1300.00
(e) Hot Water heaters	1200.00
(f) Circulating Pumps	350.00
(g) Horse tanks and pumps	1000.00
(h) Refrigerating plant	5000.00
(i) Excavate for refrigerating plant, repairing floors, etc.	1500.00
(j) General expenses, painting, insulating, etc.	1000.00

37. Total 20850.00

Note that due to the low basement heights in the Lincoln Park Manor, it will be necessary to excavate to in-

stall the mechanical equipment. The new chimney of steel must be supported independently. We would locate it in the Court at the West of the building, alongside and tied into a wall portion between windows.

38. Per Yr. Interest at 5%, amortization at 4.3% on investment, and supplies and maintenance at 5.7% on b, d, f, g, and h...	\$2,574.60
*39. Per Yr. Fuel—4 gals oil per sq. ft. radiation @ .041	1,035.00
40. Per Yr. Power for Fuel Burner, Compressor, etc. @ \$.0175	2,000.00
41. Per Yr. Labor, 2 engineers at \$400.00 per month	4,800.00
42. Per Yr. Total cost per comparison.....	10,410.10
43. Item 35, present Lincoln Park Manor cost per yr.	7,633.69
44. Per Yr. Sum saved the tenants by purchasing from the Granada at prices developed in this report	2,776.41

*(Note that the actual Granada consumption is 4.4 gallons.)

Yours respectfully,
(Signed) Samuel R. Lewis

SRL:IH

684-5

Arlington

To visualize the cost to the tenants, in case they should elect to install and to operate their individual plants, we suggests the following as a fair tabulation:

36-A Investment by Arlington.

(a) New Chimney and Supports	\$ 5000.00
(b) Boilers and piping	4000.00
(c) Boiler pit and foundations	
(d) Oil burners and tanks	1500.00
(e) Hot Water heaters	1500.00
(f) Circulating pumps	350.00
(g) House tanks and pumps	1000.00
(h) Refrigerating plant	5000.00
(i) Excavation for refrigerating plant, repairing, floors, etc.	
(j) General expenses, painting, insulating, etc.	1000.00

37-A Total\$19,350.00

38-A	Per Yr. Interest at 5%, amortization at 4.3% on investment, and supplies and maintenance at 5.7% on b, d, f, g, and h.	\$ 2,475.00
*39-A	Per Yr. Fuel—4 gals. oil per sq. ft. radiation @ .041	1,444.00
40-A	Power for fuel burner, compressor, etc. @ \$.0175 per yr.	2,500.00
41-A	Per Yr. Labor, 2 engineers at \$400 per month	4,800.00
42-A	Per Yr. Total cost for comparison.....	11,219.00
43-A	Item 34, Present Arlington cost.....	10,924.95
44-A	Per Yr. Sum saved the tenants by purchasing from the Granada at prices developed in this report.....	294.05

• (Note that the actual Granada consumption is 4.4 gals.)

Yours respectfully,

(Signed) Samuel R. Lewis.

SRL:IH

684-6 You ask for an estimate of the difference in costs, should the Lincoln Park Manor be separated from the Granada central plant.

There would result a saving to the Granada of the cost of the extra fireman during four months of the year, as it is possible to carry the Granada and Arlington heating load on one oil burning boiler, and eliminate the necessity of burning coal in the additional boiler. The entire mechanical plant would be used at lighter loads as follows:

Heating	19%
Water	23%
Refrigeration	23½%

The operating expenses should then be:

Heating:

1.	Investment cost of boilers, oil burners...	\$19,000.00
2.	Per Yr. Interest, depreciation, maintenance and supplies at a total of 15% on above	2,850.00
3.	Per Yr. Cost of oil.....	4,862.00
	Per Yr. Cost of coal.....	
4.	Per Yr. Power for Fuel Burner.....	37.60
5.	Per Yr. Cost of Ash Removal.....	
6.	Per Yr. Labor—12 mcs. at \$410.00.....	4920.00
7.	Total annual cost of heating.....	\$12,769.60

City Nat. Bank Exhibit 3.

569

8. This divided by 26000, the total number of sq. ft. of radiation in the Granada and Arlington, gives a unit cost per sq. ft. of radiation of49114
 The cost of heating the Granada and Arlington then becomes:
 9. Granada 17,500 sq. ft. \$8,594.92
 10. Arlington 8,500 sq. ft. 4,174.68
 11. Total (Same as 7) 12,769.60

584-7

Water:

12. Investment Cost of water pumps and water heaters in Granada \$ 9,230.00
 13. Per Year interest, depreciation, supplies and maintenance on above at 15% 1,384.50
 14. Per Yr. Cost of one-half of water purchases. (The other half is charged to refrigeration) 964.90
 15. Per Yr. Cost of pumping water 1,590.05
 16. Cost of heating water 1,510.76
 17. Total annual cost of water 5,250.20
 18. This divided by 195 the equivalent total number of water using units in the Granada and Arlington, gives the cost per unit of 26.9241
 19. Per Yr. Cost to Granada—109 units 2,934.73
 20. Per Yr. Cost to Arlington—86 units 2,315.47
 21. Total—(same as 17) \$ 5,250.20
Refrigeration:
 22. Investment cost of apparatus \$16,280.00
 23. Per Yr. Interest, depreciation, supplies and maintenance on above at 15% 2,442.00
 24. Cost of condensing water per yr. 764.90
 25. Cost of electricity for compressor and brine pumping 3,346.83
 26. Total annual cost of refrigeration \$ 6,553.73
 27. This divided by 173, the total number of refrigerating units in the Granada and Arlington, gives a cost per unit of 37.8828
 28. Per Yr. Cost to Granada—96 units 3,636.75
 29. Per Yr. Cost to Arlington—77 units 2,916.98
 30. Total (Same as 26) \$ 6,553.73

570

City Nat. Bank Exhibit 4.

684-8

Based on these figures the cost of the heating, water and refrigeration service to each of the two buildings is as follows:

31. Granada	\$15,166.40
Arlington	9,407.13

Yours respectfully,
(Signed) Samuel R. Lewis.

SRL:IH

685

CITY NATIONAL EXHIBIT 4.

Samuel R. Lewis
Consulting Mechanical Engineer
407 S. Dearborn St., Chicago
Telephone Wabash 6675

January 31, 1934

Mr. E. Hall,
Granada Hotel,
525 Arlington Place,
Chicago, Ill.

Dear Mr. Hall:

I have received your request that I develop a new allocation of costs between the Granada, the Arlington and the Lincoln Park Manor, based on certain suggested modifications of the set up and due to operating economies unforeseen in my report of August 1929. These changes are as follows:

- a. Fuel, average cost for heating the buildings and for heating hot water, \$7000.00 (3 year average \$6843.79).
- b. Electricity for oil burners, water pumping and refrigeration, \$3878.00 (I estimated \$6477.60).
- c. Labor, \$3500.00 (I estimated \$5520.00).
- d. Water, \$1800.00 (The cost was \$1986.76).
- e. Repairs and maintenance, an allowance of \$2500.00 (I estimated \$2542.20).

I suggested an annual interest and amortization charge of 9.3% on the Granada investment of \$44,600.00. This item seems to have been neglected in the suggested rearrangement by the Central Republic Trust Company except as a 20% addition to itself of the operating cost is offered. It seems to me that this 20% addition to the operating

cost is by no means a fair allowance to cover fixed charges. In a spirit of the utmost generosity the Granada might fairly forego all profit on the transaction, but the Arlington and the Lincoln Park Manor should more equitably assist the Granada in liquidating the extra investment which it made to serve them. There must be, also, some commensurate allowance for the many administrative services in engineering, which the Granada does furnish.

These items are affected by seasonal weather, rate of occupancy, price of fuel, etc., and a margin should be 686 included to cover such fluctuations.

Interest and amortization, \$44600.00	
@ 9.3%	\$ 4147.80
Fuel (actual)	7000.00
Electricity (actual cost less deduction of unit cost of lights and elevators)	3878.00
Labor (actual)	3500.00
Water (actual)	2000.00
Repairs and maintenance (actual)	2500.00

Agreed annual cost.....\$23025.80

Suggested safety margin and overhead, 20% 4605.16

Total annual charge.....\$27630.96

Call it \$27631.00

I have analyzed carefully the suggested charge from allocation charges by cubic feet or by rooms in lieu of the much more logical allocation by square feet of radiation (which reflects the heat actually lost), by units of water-using equipment and by units of refrigeration.

The following tabulation visualizes the comparison by C. R. T. Co.

	1	2	3	4	5	6
	Cu. Ft.	By Rooms	By Radiation	Fixtures	Ice-boxes	Combined 3, 4, & 5
Granada	51%	48%	54.5%	43%	42.5%	46.71%
Arlington	28%	31%	26.4%	34%	34 %	31.44%
Lincoln Park	21%	21%	19.1%	23%	23.5%	21.86%
	100%	100%	100%	100%	100%	100%

The rational allocation of the costs as per columns 3, 4 and 5 properly should be employed.

If the matter is one of negotiation, a quick comparison with the suggestion of the C. R. T. Co. will be at least interesting.

Arlington $\$27631.00 \times 31.44\% =$ annual charge $\$8687.17$
Lincoln Pk.

Manor $27631.00 \times 21.86\% =$ annual charge 6040.12

The weakness of this re-arrangement is that the Lincoln Park Manor now pays \$6610.00, giving the Granada an extra profit, provided the cost of \$27631.00 is correct, of \$571.00 per year. Apparently this is an overcharge and should be adjusted in case the Arlington charge shall be reduced to \$8687.00 annually.

687 You have asked me to suggest an equitable charge month by month. I believe that we may assume that monthly fluctuations in the water consumption and power will be too small to be worth considering. The fuel cost will be the main item of fluctuation. Suppose that water heating covers 25% of the annual fuel cost. Then \$5250.00 represents approximately the item which will change with the season. Suppose we add \$250.00 to this so as to be very liberal and call it \$5500.00. The variable item, \$5500.00, is 20% of the \$27,631.00 annual cost. The remaining costs are then \$22,131.00.

Based on standard experience tables of heating demand we can then set up a monthly charge as follows:

1 Month	2 Percentage of heating cost.	3 Heating cost	4 Other costs ÷ 12.	5 Total
January	21	1155	1844	2999
February	18	990	1844	2834
March	14	770	1844	2614
April	9	495	1845	2340
May	4	220	1844	2064
June			1844	1844
July			1844	1844
August			1845	1845
September			1844	1844
October	4	220	1844	2064
November	13	715	1844	2559
December	17	935	1845	2780
	100	5500	22131	27631

Based on these monthly costs the share per month of the Arlington 31.44% and the Lincoln Park Manor 21.86% would be as follows:

	Arlington	Lincoln Park Manor
January	\$940	\$655
February	890	620
March	826	578
April	737	515
May	650	455
June	578	400
688		
July	578	400
August	578	400
September	578	400
October	650	454
November	807	554
December	875	609
	<u>\$8687</u>	<u>\$6040</u>

The Central Republic Trust Company argues that the rates from a Central heating system would be lower than those which the Granada proposes, and assumes that the Arlington could carry through a season at 500 lbs. of steam per square foot of radiation, including the steam required for heating the service water.

Six large hotels in Chicago averaged for the heating alone, over several years, a metered consumption of 582 lbs. of steam per square foot of radiation per season, not including hot water. One hotel, not included among these six, required 963 lbs. of steam per square foot of radiation per season. The assumption of 500 lbs. therefore, in a steam heated building not having automatic temperature control, is too low.

The water itself for the Arlington would cost 34% of the \$2000.00 stipulated water bill or \$680.00. The cost of heating part of it would be 34% of 25% of the total fuel cost—\$600.00.

Refrigeration, however applied, means an investment charge for .77 local air or water cooled compressors or for

a central compressor. The refrigeration charge might be worked out as follows:

Fixed charge on Granada refrigerating plant x 34%	= \$ 830.00
Electricity 2/3 total power requirement x 34%	= 612.00
Service on refrigeration	250.00
	<hr/>
	\$1692.00

Then for the Arlington, granted a Chicago district heating system was present, the cost for heating, hot water, and refrigeration would develop as follows:

689 Heating—

8500 sq. ft. of radiation @ 582 lbs. per season—
5947 M Lbs.

January	21%	1038 M lbs.	\$.85	\$ 882.30
February	18%	890	.85	756.50
March	14%	690	.85	586.50
April	9%	445	.85	378.25
May	4%	198	.90	178.20
October	4%	198	.90	178.20
November	13%	645	.85	548.25
December	17%	843	.85	716.55
		<hr/>		
		4947		<hr/>
				\$4224.75

Heating	\$4224.75
Water	680.00
Heating water	600.00
Refrigeration	1692.00

\$7196.75

20% safety margin and overhead 1439.35

Total district station cost for Arlington \$8636.10

Thus the suggested new service charge to the Arlington by the Granada of \$8687.00 per year when rechecked in the light of actual experience, including investment charges, is exceedingly close in line with the charges of the Illinois Maintenance Company.

Yours very truly,

SRL:K

Samuel R. Lewis
(Samuel R. Lewis)
Consulting Engineer.

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CITY NATIONAL EXHIBIT 5

Occ. Gr.	Av.			Payroll	Elect.	Fuel Oil	Water	Mech. R. & M.	Total	Arlington Light	Granada Est. Light	Total cost to Arlington	Actual cost of Granada	Per M	Corr. to Accrual Basis
		1932	5 mos.	1,025.	3,136.26	2,891.92	1,598.34	294.61	8,946.13	1,022.	1,700.	7,246.13	2,180.	436.	436.
87	86	1933	12 "	2,458.11	7,066.96	6,892.86	1,949.22	519.02	18,886.17	2,539.72	4,200.	14,686.17	4,400.	367.	367.
90	91	1934	12 "	2,432.70	7,410.60	7,313.41	2,248.47	878.62	20,283.80	2,504.43	4,300.	15,983.80	4,700.	391.	391.
90	91	1935	12 "	2,490.	7,510.83	7,278.62	1,997.31	1,091.27	20,338.03	2,399.60	3,800.	16,538.03	4,960.	414.	414.
94	95	1936	12 "	2,460.	7,759.19	7,356.82	2,057.44	212.	19,845.45	2,427.77	4,000.	15,845.45	4,750.	396.	396.
						*1.								*1.	
95	97	1937	4 "	823.50	2,372.16	4,556.67	625.19	36.24	8,413.76	873.63	1,450.	6,963.76	2,090.	518.	358.
		Total		11,659.31	35,256.	36,290.30	10,475.97	3,031.76	96,713.34	11,859.15	19,500.	77,263.34	23,080.		
		Ave. Year		2,450.	7,400.	7,640.	2,200.	630.	20,350.	2,495.	4,100.	16,250.	4,850.		
		Corr.		2,450.	3,300.	7,640.	2,200.	630.	16,250.				4,850.		
		S. R. L. 1929		5,520.	6,477.60	9,602.	1,987.76	6,676.88	30,324.28	+20%			10,924.95		
		S. R. L. 1934		3,500.	3,878.	7,000.	2,000.	6,647.80	23,025.80	+20%			8,636.10		

Heat.....	19,000
Water.....	9,230
Ref.....	16,290

*1. Fuel Oil is for 1st 4 mos. of 1937 and represents 60% of years requirements. Av. fuel per month thruout year is \$610 or \$183 to the Arlington. Ave. fuel per month for 4 mos. 1937 is \$1,139 or \$343 to the Arlington.

	Misc.				Rooms						Ratio				
	Arlington	Granada	Lincoln	Total	Arlington		Granada		Lincoln P.M.		Arl.....				
Cube.....	576418.	1040350	434181	2050949	Hotel.....	14	14	18	18	10	10	90	36.05	128	30.5
%.....	28%	51%	21%	100%	Pullmans....	47	47	32	32	37	37	114	41.20	211	50.3
Rooms.....	128	211	81	420	D.K.....	20	40	30	60	5	10	60	22.75	81	19.2
%.....	30.30	50.5	19.5	100%	3's.....	9	27	134	39	8	24	264	100	420	100
Radiation % (S.L.)..	26.4	54.5	19.1	100%	2's Pul.....			13	26						
					4/5.....			4/4	36						
						90	128	114	211	60	81				
S.R.L. = S.R. Lewis.															

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766

CITY NATIONAL EXHIBIT 8.

42 apt

21—1 Rm

12—2 Rm

7—3 Rm

2—3 Rm 2 Bath

Lt 90-100 mo

Power 50-65 mo

Oil 140.00 mo

5000 Rad

Rep needed 20.00 mo

Water 15 mo

El. Lt. Bulbs 10.00 mo

Misc, Repr 20.00 mo

767

100 Rm Hotel

6000 Rad

Oil—1600-1800 yr

Coal 1000 yr

Lt 105.00

Water 12.00 mo

Repairs 20.00 mo

768-1 (Letterhead of Irving E. Brooke, Chicago)

September 21, 1937

Mr. I. L. Hertzman
Property Management Division
City National Bank
208 South La Salle Street
Chicago, Illinois

Dear Mr. Hertzman:

In accordance with your request, I visited the Granada, Arlington, and Lincoln Park Manor Hotels on Friday, September 17. Subsequent to my visit, my associate, Mr. W. F. Dolke, made a detailed count of the radiation in the Arlington Hotel and found a total of 7,038 square feet.

I made a very preliminary inspection of the present plant in the Granada building as well as a general inspection of the heating and piping system in the Arlington building.

Accompanying this letter is an estimate of the construction cost as well as the total cost of operation for a boiler plant and heating system for the water supply system and for a refrigerating system to provide these services for the Arlington Hotel.

I trust you will find that this will serve your purpose.

Yours very truly,

Irving I. Brooke,

Irving E. Brooke,

Consulting Engineer.

IEB:R
Enc.

768-2 A. Construction and Installation Costs
Heating System

1. Boiler, Kewanee #383—10125 sq. ft.	\$ 1600
2. Freight and Installation	200
3. Piping and Connections	785
4. Stoker	1250
5. Stoker Installation	150
6. Foundations (stack, boilers, pumps, stokers)	130
7. Stack 26" diam. x 70', steel	900
8. Breeching	125
9. Water Feeder	150
10. Vacuum Pump	900
11. Electric Wiring	100
12. Covering and Insulation	130
13. Building Changes	200

6620

Engineering

400

7020

Contingencies, 10%

702

\$ 7722

B. Operating Expense

B-1 Fixed Charges

1. Interest on Investment	6%
2. Depreciation	6%
3. Insurance	1%
4. Taxes	1½%
5. Rental Value of Space	—

Say — 15%

\$ 1158.30

B-2 Operating Charges

1. Fuel	\$ 1580.00
2. Electric Current	80.00
3. Ash Removal	75.00
4. Repairs and Maintenance	200.00
5. Labor and Attendance	300.00

Total Cost of Operation

\$ 3393.30

768-3 Water Supply System

1. Water Heater	\$ 300
2. Circulating Pump	50
3. Piping and Connections	450
4. Two House Pumps	600
5. One Sump Pump	250
6. Foundations and Supports	150
7. Two Water Tanks	550
11. Electric Wiring	125
12. Covering and Insulation	175
13. Building Changes	100

Total	2750
Engineering	200

Contingencies, 10%	2950
	295

	\$ 3245
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1. Interest on Investment	6%
2. Depreciation	6%
3. Insurance	1%
4. Taxes	1½%
5. Rental Value of Space	—

Say — 15%	\$ 486.75
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1. Water	225.00
2. Electric Current	125.00
3.	
4. Repairs and Maintenance	100.00
5. Labor and Attendance	50.00

Total Cost of Operation	\$ 986.75
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768-4 Refrigerating System

System complete with 10 H. P. Motor, and
Compressor, and Cooler and Equipment— \$ 3500.00
(Including Engineering and Contingencies)

- | | | |
|---------------------------|-----|--|
| 1. Interest on Investment | 6% | |
| 2. Depreciation | 6% | |
| 3. Insurance | 1% | |
| 4. Taxes | 1½% | |
| 5. Rental Value of Space | — | |

Say — 15% \$ 525.00

- | | |
|----------------------------|--------|
| 1. Gas and Brine | 50.00 |
| 2. Electric Current | 200.00 |
| 3. Water | 175.00 |
| 4. Repairs and Maintenance | 50.00 |
| 5. Labor and Attendance | 25.00 |

\$ 1025.00

Total—

Heating System

\$ 3393.30

Water Supply System

986.75

Refrigerating System

1025.00

\$ 5405.05

1130

CITY NATIONAL EXHIBIT "G."

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 65811) * *

Transcript of Proceedings.

Before:

Hon. John P. Barnes, J.

May 15, 1937.

1132 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption 65811) * *

Transcript of Proceedings.

The following is a transcript of the proceedings in the above entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, on Saturday, the 15th day of May, A. D. 1937, at 11:00 o'clock A. M.

Present:

Defrees, Buckingham, Jones & Hoffman, represented by Tracy Buckingham, Esq., and Vincent O'Brien, Esq., on behalf of Bondholders' Protective Committee.

1133 Messrs. Mort D. & Frank Goldberg, represented by Mort D. Goldberg, Esq.; Vernon R. Loucks, Esq.; Frank E. McAllister, Esq.; J. R. Lasky, Esq.; Mr. Greenberg; Mr. Micon; L. T. Allen, Esq.; Paul W. Mitchell, Esq.

And thereupon the following proceedings were had herein:—

The Court: How long should this matter take, gentlemen?

Mr. Goldberg: On behalf of the petitioner, it should only take a few minutes. I cannot say, for the objectors.

Mr. Greenberg: It will take considerable time; over an hour.

Mr. Loucks: If the Court please, I think we may shorten this. I think the petition is defective on its face, and I have a question on that point that may shorten all of the testimony.

Mr. Goldberg: Your Honor, on behalf of the petitioner in this case, we filed a voluntary petition, the petitioner being the Directors of the Granada Apartments, Inc.

About two or three days before this petition was filed in this Court, and without our knowledge, an involuntary petition was filed in Danville.

1134 Upon a hearing of an answer to that petition, Judge Lindley recommended that that petition be transferred to this Court, and, accordingly, it has been done.

The petition filed here bears the signatures of the Directors of the Corporation. Resolutions were duly pre-

pared and presented to me, and upon the authority of these resolutions I filed this petition.

Immediately after filing it I came to this Court, the following morning, and asked that an order be entered, approving the petition as having been filed in good faith.

At that time Mr. Loucks appeared and informed this Court that the Directors had no authority to vest any attorney with the right to prepare a petition, or to file it. At that time I did not know who Mr. Loucks represented, but I afterwards determined, and from such information that has been given to me, I don't believe he represents either a creditor or a petitioner or a stockholder.

Now I am prepared, your Honor,—unless the proof is waived,—to ask the Director, who is present in this Court this morning, and who attending a meeting for the 1135 purpose of having this petition filed, put on the stand and sworn, and ask him if he had the authority—I do not think anyone will question that, but, if it is questioned, I will be glad to prove it.

Mr. Loucks: If the Court please, that is not the point—

Mr. Goldberg: Well, it is the point to this extent, your Honor—unless you have an interest in these proceedings, I do not think you should be heard.

The Court: Whom do you represent?

Mr. Loucks: I represent, if the Court please, the Estate of Mr. Ingersoll. Mr. Ingersoll is a man who, before his death, made a deal with a man who is back of this petition, that is, the real party in interest, whereby he came up here and the old gentleman put up \$17,000, with which he bought three-fourths, approximately, of the stock of this Corporation.

Now, it is contended at this time by this other party, that although he put up the money for it, that it was not his; that, in effect, it amounted to practically a loan, for which this other party was to have a year to pay him back, and work out some kind of a condition on this.

1136 We think the facts amply sustain that position.

I take it, that is a long question to go into, until this can be disposed of, and I think this can be disposed of very quickly on two points:

The first is that the petition is defective on its face, in two respects; it does not show that these officers who signed this are the Board of Directors.

Now, there are several cases I have here, and am prepared to read, and I will just take a moment, if your Honor cares for that, to show that the officers of a corpora-

tion have no presumptive authority to sign this kind of an authority.

I will state my second point, if your Honor please, and I am prepared to read authorities on both of them: The second point is that this petition does not comply with the law as set forth in the Manatee Sugar Company case, 75 Federal Second 284.

That case holds a petition of this kind must not only recite the jurisdictional facts, but it must recite the facts sufficient to show there is a reasonable possibility of a plan being submitted that will be accepted by the creditors.

Just a short statement by the Court in that case—
1137 The Court: Who wrote the opinion?

Mr. Loucks: Your Honor, I cannot answer that. I cannot answer that.

The Court holds that it does not have to show a plan of reorganization fully worked out and ready for immediate consideration, but it is essential to show that one may be forthcoming; and, the Court says there must be something in the plan,—it must show that there is a plan of reorganization set forth, or promise that one may be forthcoming.

The Court: Oh, well, that is something after the statute.

What is the case?

Mr. Loucks: Manatee Sugar Company versus Mack, 75 Federal Second, 284.

The Court: If there is any doubt about it, the petition must be filed in good faith, and "good faith" means something more than mere honesty of purpose; it may include the examination of the question of good faith, and include the question of whether there is a probability of a plan being proposed that is likely to be accepted. But, it don't have to show all of that, right on the face.

1138 What is it you say?

Mr. Loucks: 75th Federal. At 284 is the language of the Court—at Page 281.

The Court: More against—?

Mr. Loucks: No; Manatee Sugar Company *vs.* Mack, 275 Federal Second, at Page 285.

The Court: (Examining citation.) No. I think that opinion goes a very long ways: It adds something to the statute, unquestionably.

Mr. Loucks: Now, on the other point, I am not raising that merely to be captious or for the purpose of delay; but, the facts, as I understand it, are that these Directors sold

their stock in the Spring of last year, of 1936,—all sold their stock, and surrendered it, and surrendered their stock and handed in their resignations.

Those are facts which I have been informed—I have not been able to verify,—which I am informed is the fact, and I think we are entitled to have an allegation in this petition—I think the petition is defective in not showing that it was adopted by the resolution of the Board of Directors.

The Court: You represent a stockholder?

Mr. Loucks: Yes, your Honor. The facts are 1139 these: There has been a contest as to whether my man owns the stock or merely holds it as collateral.

Our man during his lifetime,—an elderly gentleman,—came up here and made a deal with the party who is really back of this petition, and he put up about \$17,000 and bought quite a few of the securities of the first, second issues of the first, second mortgage bonds, and three-quarters, three-fourths, approximately, of the stock, all of the common stock, and half of the preferred stock of the corporation.

It is contended now that he did not buy it;—that he did not acquire title to it; that he merely put up the money as a loan.

The Court: Where is this property now?

Mr. Goldberg: Mr. Ingersoll, the party who advanced the money, about six months—

The Court: No. Where is the property?

Mr. Goldberg: The Granada Hotel.

The Court: In the hands of a receiver?

Mr. Goldberg: No, the trustee under the mortgage is in actual possession; but, there was a receiver appointed over his right.

The Court: How long has he been in possession?

1140 Mr. Goldberg: He has been in possession, I would say, about eight or nine years—seven years; it has been some time; and, he is accounting to the bondholders.

They have a decree in the State Court, your Honor; but, certain forces have been at work in this case to destroy the plan of reorganization, through State Court proceedings, although a final decree has been entered there; and, through a process of securing a judgment in the Municipal Court of Chicago on these bonds; on 3,000 of these bonds, secured a receiver in the Circuit Court.

The Court: Well, let me make an observation—

Mr. Goldberg: Yes, your Honor?

The Court: That property has been in difficulty for eight years?

Mr. Goldberg: It has, your Honor.

The Court: And, for two and a half years after the passing of 77B!

It is a disgrace to somebody!

It is a disgrace to somebody!

Mr. Greenberg: \$28,500 set aside for taxes, has disappeared.

There was \$50,000 set aside, as the records will 1141 show, to pay up chattel mortgages? That has disappeared.

No one seems to be able to account for where that money has gone to.

On top of that, they have put on a \$75,000 second mortgage, which is being collected now, every month.

The Court: I do not know about that, but I can say to you, without any further investigation, that the fact that this property has stayed in trouble for eight years, and two and a half years after the passage of 77B, is a disgrace to somebody!

Mr. Lasky: I might say, your Honor, I tried to put them in 77, two years ago, and they took me to the Supreme Court and knocked it out on the ground—at that time it was before Judge Lindley; that was the case of Tuttle vs. Morris.

Mr. O'Brien: If the Court please, I represent the Committee.

The Court: How many bonds?

Mr. O'Brien: Oh, I should say about two-thirds of them.

The Court: Well, your Committee can take to heart what I say. Put on your witnesses.

Your Committee can take to heart what I say.

1142—Mr. O'Brien: Better wait until this is finished, and then we can get at that!

Mr. Lasky: I take it the testimony about to be adduced, is going to the question of good faith, and it should show us the circumstances that have existed for so many years; I should like to ask this Court, if he will, to look to the question that was disposed of at our last hearing,—of what this proceeding should be. I offer that suggestion, for I believe the testimony—

The Court: What?

Mr. Lasky: We have had two involuntary petitions in Danville, and one voluntary one up here, filed subsequently; and your Honor, at our hearing Monday, disposed of the motion to transfer.

I am only asking that, as we go into this evidence, the

Court, seeing the ramifications, will bear in mind the question of the motion to transfer back to Danville.

The Court: Why?

Mr. Lasky: Because of the investigation that was made throughout the years, down there.

The Court: I said to you it is a disgrace this case is in court!

It is going out now, one way or the other, and it is 1143 going out promptly.

Mr. Greenberg: Is it affirmative proof on the part of the petitioner, or the Answer?

The Court: Whoever has the burden should start.

GEORGE U. NICHOLS, called as a witness herein, having been first duly sworn, testified on oath as follows:

Direct Examination by Mr. Goldberg.

Q. Will you please state your name?

A. George U. Nichols.

Q. Your address?

A. 2407 Burling.

Q. Are you acquainted with the Granada Apartments, Inc.?

A. Yes.

Q. Are you one of the Directors of the Granada Apartments, an Illinois Corporation?

A. I am.

Q. How long have you served as Director?

A. I do not know just the number of years, but several years.

Q. Have you ever tendered your resignation as Director of this Corporation?

1144 A. No, sir.

Q. Are you a stockholder of this corporation?

A. Yes.

Q. Who are the other Directors of this Corporation, if you know?

A. R. W. Walters.

Q. Did he sign this petition?

A. Yes.

Q. And your name is also affixed to this petition, Mr. Nichols?

A. Yes, sir.

Q. And what other Directors are there?

A. Allen W. Brown, I believe.

Q. And did he affix his signature to the petition, as a Director?

A. Yes, sir.

Q. Are there any other Directors besides you three that are active, and who have not tendered resignations?

A. I believe not.

Q. Was a resolution duly adopted, pursuant to a meeting held for the purpose of authorizing the filing of this petition in this Court?

A. There was.

Q. Are you acquainted with the financial status of 1145 the corporation?

A. To some extent.

Q. What is the unpaid balance due on the first mortgage on this property, Mr. Nichols?

A. I could not tell you that offhand.

Q. Is there a junior mortgage, a secondary mortgage?

A. I believe not.

Q. Do you know whether or not taxes have been paid on this property, up to current billing?

A. I believe not.

Q. Who is now in possession of these premises, collecting the rents and managing the property?

A. The receiver.

Q. What is the name of that party?

A. I could not give you that.

Q. How long has the so-called receiver been in possession of the premises, collecting the rents and incomes?

A. A year or more.

Mr. Goldberg: All right. Take the witness.

Cross-Examination by Mr. Greenberg.

Q. How much stock do you own in this corporation?

1146 A. I have several parcels. I will have to figure it out.

Q. Do you know, without referring to any documents?

A. No.

Q. Do you know how much stock Mr. Walters owns?

A. No; not without referring to documents.

Q. And do you know how much stock Mr. Brown owns?

A. No.

Q. Do you know the names of any of the stockholders,

outside of these three? Do you know the names of any of the stockholders outside of yourself?

The Court: Was this loan put on there by that St. Louis bond house?

Mr. Greenberg: No, your Honor; it was put on right here, by the Cody Trust Company.

The Court: Is the President, Mr. Mateer, here?

Mr. Greenberg: He was President of them at one time.

Mr. O'Brien: No, Mr. Mateer was President one time, of the old corporation.

The loan was made jointly by the Chicago Trust Company and the Cody Trust.

The Court: Where are the bonds?

1147 Mr. O'Brien: They are held by the City National Bank and Trust Company, as depository.

The Court: Go ahead.

Mr. Greenberg: Q. When were you elected a Director, sir?

A. I do not remember the exact date; some three or four years ago.

Q. Do you know when the first mortgage on this property was put on? The first mortgage?

A. Yes.

Q. When was that put on?

A. I could not tell you the date.

Q. How?

A. I could not tell you without referring—

Q. How much was it?

A. Well, I do not know, exactly.

Q. Do you know when the first, second mortgage was put on?

A. Yes; I knew when that was put on.

Q. How much was that?

A. I do not recall.

Q. Do you know when the second series of first, second mortgages were floated?

A. Yes; I knew it at that time.

Q. When were they floated?

1148 A. I could not tell you.

Q. By whom were they floated; what financial agency?

A. One of the banks.

Q. Well, don't you know that the first series mortgages totaled about \$595 000? Do you know that?

A. No, I do not.

Q. Do you know that the second series mortgages totaled \$885,000?

A. Near that.

Q. What happened to the increase of the \$300,000?

A. I could not tell you.

Q. Do you know where that money went to?

A. No.

Q. Were you a Director at that time?

A. I was.

Q. Well, don't you know what happened to that money?

A. No, sir.

Q. Was it disbursed by resolution of the Board of Directors?

A. I could not tell you that.

Q. Wasn't it just used to build the Arlington, the other buildings that are interested in this picture, or a part of this picture?

1149 A. No, sir.

Q. Well, there is a part of this picture, other buildings,—is there not?

A. There are three sections.

Q. Yes; one of them is called what? The Arlington? Is that right?

A. The Arlington.

Q. Light, heat and telephone service is furnished there, from the Granada, is it?

A. Yes.

Q. What is the other section?

A. Lincoln Park Manor.

Q. And the same arrangement there?

A. Yes.

Q. What is the third section?

A. The Granada.

Q. Now, who made that arrangement; do you know?

A. What do you mean?

Q. Who made the arrangements to furnish the light, heat and telephone service for the properties you have just mentioned?

A. Why, the Granada Building.

Q. Were you on the Board of Directors at that time?

A. Yes.

1150 Q. Now, what is the compensation paid by those other units to the Granada for that purpose, do you know?

A. I could not tell you that detail.

Q. Have you the corporate records?

A. (No answer.)

Q. Have you the corporate records?

A. No.

Q. Who has them?

A. Well, I don't know.

Q. Where have they been kept for the last year, or two or three?

A. That I do not know.

Q. Do you know anything at all about the manner in which the other buildings were built and furnished?

A. I knew it at the time.

Q. You were a Director at the Arlington, weren't you?

A. No.

Q. Weren't you a Director, at that time?

A. Not of the Arlington.

Q. Were you a Director of any of the other properties?

A. The Granada.

1151 Q. And that is the only one? That was the first unit built, wasn't it?

A. The first unit.

Q. Yes. Now, then, how was the building financed, with reference to the furnishing of the property for use, —the furniture: Who paid for that?

A. The Granada.

Q. How did they pay for it? Do you know the method?

A. They took a mortgage.

Q. Yes. Albert Pick & Company?

A. Yes.

Q. Was Albert Pick & Company paid up, or did they litigate that question?

A. That is in litigation.

Q. All right. Will you tell the Court, then, how it was that you borrowed \$75,000 and gave a chattel mortgage upon the furnishings in the Granada,—how that was done?

A. I cannot remember why.

Q. You were a Director then, weren't you?

A. Yes.

Q. Do you remember any of the details?

A. I do not remember the details. I know that—

Q. Have you lost your memory, Mr. Nichols?

1152 A. Well, it depends.

Q. I see. What happened to the \$50,000 that the Granada set aside in cash to meet the Albert Pick claim? Do you know where that went to?

A. No.

Q. Can you account to the Court for that money?

A. No.

Q. You were a Director then, weren't you?

A. Yes, sir.

Q. How is this \$75,000 being paid?

A. I do not know that.

Q. Are you a Director now?

A. Yes.

Q. Do you have any knowledge at all about what is being done with the company's property?

A. Well, I know something.

Q. Well, tell it to the Court, if you know anything; please let us hear it.

A. I know it is in the hands of a receiver.

Q. Is that all you know? Is that all you know?

A. Well, I won't say it is all. What particular do you want?

Q. How often do you meet as a Board of Directors?

A. As time would call.

Q. How often have you been called, in the last 1153 year?

A. Two or three times.

Q. When was the first time?

A. I have not got that data.

Q. Well, what was the purpose of the meeting, the first time?

A. I do not know what was—

Q. When was the second call?

A. (No answer.)

Q. And, when was the second meeting?

A. I have not the dates with me.

Q. When was the third call?

A. The same answer.

Q. How?

A. The same answer.

Q. Did you have any other calls besides the first three calls that you mentioned, the last year?

A. No; I think that concluded it.

Q. That was all? Do you remember what resolutions you passed, and the purpose of the meetings, of the second and third calls, as well as the first?

A. Not at this time.

Q. No, you don't. What properties does the Granada own?

A. The property where the building is built.

1154 Q. And, what others?

A. Facing Arlington.

Q. Yes?

A. Along the alley, a diagonal alley just west, immediately west of Clark Street.

Q. Do you own that property?

A. Yes.

Q. What is the name of that one?

A. The Granada Apartments, Inc.

Q. I asked you what other property this company owns.

A. The Fullerton.

Q. Fullerton Plaza?

A. No, not the Fullerton Plaza.

Q. The Fullerton Building Corporation?

A. A building corporation immediately to the south, facing Fullerton.

Q. Yes. Now, what else does it own?

A. The building across the street on Arlington.

Q. What is the name of that? The Arlington?

A. The Arlington.

Q. Now, what else does it own?

Mr. O'Brien: If the Court please, I object to this testimony: The witness is not qualified, apparently, to state what the Corporation owns.

1155 Mr. Greenberg: He is a Director; he ought to know what the Company is doing.

Mr. O'Brien: I do not want to interrupt, but if you want the facts on that, there is a way of showing who owns it.

Mr. Greenberg: I am asking this man. He has a right to state what he knows and sees and hears.

The Court: Let him answer.

Mr. Greenberg: Q. What else does this Company own?

A. No other buildings in Chicago.

Q. All right. It owns property in other cities, does it not?

Mr. O'Brien: I still note the objection, your Honor, as not being any way to prove ownership of these things.

Mr. Greenberg: Those are very material things, your Honor, and this man knows it; and, I am objecting to Mr. O'Brien interrupting.

The Court: Proceed; tell us what you know about it.

The Witness: I do not know what you allude to.

Mr. Greenberg: Q. What about property in Kansas City; what properties do they own there?

A. I think the present status is that they own
1156 nothing.

Q. When did they dispose of the property in Kansas City,—this Company?

A. I do not believe it was an act of this Company. It was an act of foreclosure.

Q. You owned it at one time, didn't you? This Company owned that property in Kansas City? Now, tell the Court what sort of property it was.

A. The Kansas City property meant some apartment buildings in Kansas City.

Q. And, what else? A lot of duplexes, weren't they; a lot of vacant property, wasn't there?

A. There was some vacant property.

Q. Wasn't there some hotel property?

A. Yes.

Q. Now, when did they lose their rights in that property?

A. That I could not tell.

Q. How did they lose it?

A. Foreclosure.

Q. How do you know that?

A. Well, I was not served with any papers on it, so it is not of my own knowledge.

Q. From whom did you gain that knowledge?

A. Why, meeting with people.

1157 Q. What people did you meet with?

A. The stockholders.

Q. When did you meet with the stockholders last, Mr. Nichols?

A. I have not any memorandum with me.

Q. How long ago was it that you met with the stockholders of this Corporation, for any purpose?

A. It is a couple of months.

Q. Yes. Who was present, now; who were the stockholders you met with? Let us have their names, please.

A. Mr. Walters.

Q. Mr. Walters; how much has he got? How much stock does he own?

A. I do not know. The records will show.

Q. Well, all right. Who else was there?

A. And Mr. Brown.

Q. Who else?

A. Mr. Buck.

Q. Wasn't Mr. Wenstrand there?

A. No.

Q. Hasn't he any stock in this company?

A. Better ask him.

Q. I am asking you: Do you know?

A. I do not know.

1158 Q. Do you know whether or not the old gentleman who died, Mr. Ingersoll, was a stockholder?

The Court: This petition now on hearing; is that of the Granada Apartment?

Who is objecting to the approval of that?

Mr. Greenberg: We all are, Judge.

The Court: Well, will somebody tell me who, and whom he represents?

Mr. Micon: I am representing—

The Court: You represent whom?

Mr. Micon: A judgment creditor.

The Court: What is the amount of the judgment?

Mr. Micon: \$4100.

The Court: Your claim is that amount of bonds?

Mr. Micon: Yes. This judgment was obtained on certain bonds,—I mean certain bonds, first mortgage bond issue.

The Court: But, you do not have any lien ahead of the bonds?

Mr. Micon: I do not claim that.

The Court: Well, who else is opposing—will you state your names for the record?

Mr. Lasky: J. R. Lasky, I am associated in this case with Walter T. Gunn of Danville, and with Gilbert Wagner of this city.

1159 The Court: Whom do you represent?

Mr. Lasky: We represent bondholders.

The Court: Do you represent petitioners—?

Q Mr. Lasky: In Danville; that is correct.

The Court: —in those two proceedings in Danville?

Mr. Lasky: That is correct.

Mr. O'Brien: No; that is not right—

Mr. Lasky: We filed the latest involuntary petition in Danville.

Mr. O'Brien: The second petitioners.

The Court: You represent the petitioners in 20038?

Mr. Lasky: There are four bondholders there, your Honor: Gordon, Rose, Harris and Greenberg, of New York.

Mr. Goldberg: May I suggest to your Honor, the creditors in the second petition at Danville are the same creditors as in the first?

Mr. Lasky: That is very true, your Honor. The reason—

The Court: Just a minute. Who else?

Mr. Loucks: Vernon R. Loucks; at the time being I am opposing it, until I can find out more about this.

1160 I represent the Estate of S. A. Ingersoll, who claims all of the common stock of the Corporation and approximately half of the preferred stock and a certain number of those first mortgage bonds and second mortgage securities.

The Court: About how many first mortgage bonds?

Mr. Loucks: Not a large number, if the Court please.

The Court: Well, how many?

Mr. Loucks: About thirty or forty thousand of first mortgage bonds, and about a hundred thousand second mortgage bonds.

Our claim of ownership is contested. I want to say that.

The Court: Who else?

Mr. Allen: L. T. Allen, Danville, Illinois; I represent 3,000, for Mrs. Newman, and 4500 for Elmer Anderson of bonds.

David H. Greenberg; I am associated with him.

Mr. Mitchell: Paul M. Mitchell; I am appearing here today on behalf of Gilbert F. Wagner, who is out of town, in Texas. And, Mr. Wagner is associated with counsel for involuntary petitioning creditors in Danville.

1161 Mr. McAllister: Frank E. McAllister. My interest is somewhat in unity with Mr. Lasky and Judge Allen here. I was the one who brought the first Granada Hotel Corporation case, and then the Granada Apartment.

The Court: You represent Sam Harris, J. Rose, and I. Gordon?

Mr. McAllister: Yes, your Honor.

The Court: Judge Allen: Whom do you represent?

Mr. Allen: Mrs. Florence Newman; Newman, a bondholder of \$3,000; and, Elmer Anderson, 4500.

The Court: Mr. Greenberg, whom do you represent?

Mr. Greenberg: The same that he has mentioned.

I want to state to your Honor that Elmer Anderson also has \$7,000 of the bonds of the Arlington, which we contend is a part and parcel of this property and whose title the particular corporation owns.

Mr. O'Brien: If the Court wants the facts on those matters, I will be glad to give them. I have a book full of them.

The Court: Who else is opposed to this petition?

Now, take this petition 65811.

Mr. Lasky: Mr. Gunn, Mr. Wagner and myself.

The Court: Who is opposed to the finding of that 1162 petition as filed in good faith?

Mr. Goldberg: I am—

The Court: Will you state your name?

Mr. Goldberg: Mort D. Goldberg, representing the Granada Apartments, Inc., the Debtor.

The Court: 65811.

Mr. Goldberg: On motion by our office that matter was removed to this Court, by Judge Lindley.

The Court: Who else is opposed?

Mr. Loucks: Vernon R. Loucks, representing the same parties. At this time, your Honor, I am.

The Court: Who else is opposed, to 3008-D? Anybody else?

Who is opposed to 2701-D?

Mr. O'Brien: I am, your Honor, and I have a motion pending to dismiss it.

The Court: And you represent the Bondholders' Committee?

Mr. O'Brien: Yes.. There were two involuntary petitions filed some years ago; one of them against the old corporation, the Granada Hotel Corporation.

When it was discovered that that corporation, a long time before, had parted with the title to Granada Apartments, Inc., a similar petition was filed also at Danville against the new corporation.

As your Honor may remember, we opposed both of those petitions.

The Court: I do not know about it. I have hundreds of them.

Mr. O'Brien: Yes, I know. Well, at any rate, you did have it, and the first case did go to the Supreme Court.

Our objections were to the jurisdiction, and were upheld.

That case was transferred to you at Chicago, and we dismissed it.

We filed a similar motion to dismiss the other case against the new corporation, filed on the same grounds and at the same time.

We made a motion to dismiss that at Danville.

The petitioners took leave to amend, claiming an act of bankruptcy.

We moved to dismiss the petition as amended, and that motion is pending and undisposed of, originally before Judge Lindley and now transferred before your Honor, assuming that all of these cases have been formally assigned here.

The Court: Your Committee does not oppose 3008-D?

1164 Mr. O'Brien: We have no grounds for opposing it. We did have grounds for opposing the others—there was no jurisdiction.

The Court: Who does oppose 3008-D?

Mr. Goldberg: Yes.

Mr. O'Brien: I am asking your Honor to rule on my petition to dismiss the old petition, but I am not opposing either of the others.

Mr. Loucks: On behalf of the Ingersolls, I am also opposing until I can learn more about the complicated situation.

Mr. Greenberg: In 3008-D, that matter was referred to a Special Referee at Danville; all the prior cases are referred to a Special Referee, and, he made a written return, finding that the filing was in good faith.

Mr. O'Brien: We just have not got the facts of this matter—

Mr. Greenberg: I wasn't there.

Mr. O'Brien: I know what happened. Here is the status, your Honor: In the petition—

The Court: 3018?

Mr. O'Brien: That is not even the right number.

Mr. Greenberg: 3008.

Mr. O'Brien: 3008 is the one recently filed at Danville, apparently with the proper jurisdiction. I mean, as far as any complaint ever made, is concerned.

The Court: Yes?

Mr. O'Brien: But, I am talking about the old petition at Danville, and I have got a motion pending to dismiss that; and Judge Lindley never did approve it, and he would have dismissed it as a matter of course when the Granada case came on.

The Court: And, you represent three-fourths or two-thirds?

Mr. O'Brien: Yes, I do.

The Court: You do not object to 3018, the new one filed at Danville?

Mr. O'Brien: I have made no objection to that, or to the voluntary.

Mr. Goldberg: I have, your Honor; I filed proper objections in Danville, and they were brought up and argued, and the matter was transferred here.

The Court: Who else objects to 3018?

Mr. Loucks: I do, if your Honor please, on behalf of the Ingersolls,—at this time, until I know more about it.

The Court: Well, what is your specific objection?

1166 Mr. Loucks: My understanding is that the petition was filed down there,—I do not know enough about it; I understand it is filed by bondholders representing a very small interest in bonds.

Of course, I appreciate, under the decisions, that in itself is not sufficient.

The Court: The trouble in this case is nobody has been doing anything. I cannot blame anybody in particular, but we must get started.

Mr. Loucks: I have been trying to find out. I don't know enough about it. I may not object to any of it later.

Mr. O'Brien: You have had time to go into the books.

Mr. Loucks: Where can I find the books?

Mr. O'Brien: We want to get the thing reorganized. We were not able to do it in the old proceedings.

The Court: 3008-D and 65811, they are consolidated, and they are both approved. We will want to appoint a trustee. Bring in an order.

Mr. McAllister: May I move the old case be consolidated?

Mr. O'Brien: I ask the old case be dismissed, on 1167 my motion.

Mr. Goldberg: I have Judge Lindley's investigator in court, and he has made a report to Judge Lindley, and I think your Honor has a copy of it.

The Court: I have not seen it. What is in it? What does it say?

Mr. Goldberg: I have a copy of it here. It goes into the ramifications of this thing—

Mr. O'Brien: In connection with what does this come up?

The Court: What is it about?

Mr. Goldberg: There are so many things that have occurred in this thing; and there is so much misappropriation of funds—

The Court: Don't worry about that. I will find out.

Mr. Lasky: For some time the Debtor has been making verbal or written allegations, or both, that it only has one piece of property up in Chicago; and it develops there is property in other cities.

The Court: That would be a remarkable situation, if true.

Mr. Lasky: And I think, if I am properly advised, that may have been the reason for the transfer up here.

1168 The Court: There are all sorts of rumors.

Mr. Goldberg: I think proper petitions are filed

and they should be answered. If they are subject to concealment, there is a penalty for that.

Mr. O'Brien: Will your Honor rule on that first involuntary, first?

The Court: What is wrong with it?

Mr. O'Brien: It is no better than it ever was.

Mr. McAllister: It alleges an act of bankruptcy.

Mr. O'Brien: You may have to look at the amended petition and the motion to strike—an act of bankruptcy by a corporation which has not been in possession of its property for four years.

Mr. McAllister: Referee Grant, who heard the evidence on that, recommended it as having been filed in good faith. And then we asked to re-refer it, and it was denied.

The Court: I am going to dismiss that one. I have got two; that is enough.

Mr. Lasky: Which?

The Court: 65967 and 65811 are consolidated, and approved, and I will appoint a Trustee. You may prepare and present draft order. What should his bond be?

1169 Mr. O'Brien: Your Honor, you spoke of bringing in an order on that. I am somewhat interested in that phase of it. What do you have in mind as to an order?

The Court: Bring in an order.

Mr. O'Brien: I mean, what would be the substance of the order?

The Court: Bring in an order that would effectively do what I indicated, with provision for the appointment of a Trustee, and I am now asking for suggestions as to the amount of the bond.

Mr. O'Brien: I understand that, your Honor.

The Court: The petition is dismissed.

Mr. O'Brien: What are the powers of the Trustee?

The Court: Oh, I want him to have broad powers.

Mr. O'Brien: I am asking, because I am interested in the matter only insofar as the order might relate to the custody, with the mortgage on the property.

The Court: He will have to take custody.

Mr. O'Brien: On that, your Honor, I have here the special appearance of the trustee-in-possession, with a petition setting up the facts, which I would like to ask leave to file.

The Court: This says he is in possession under 1170 a mortgage, and has been there for more than four months.

Mr. O'Brien: Substantially so.

The Court: It may be filed.

Mr. _____: Did the Court consolidate 3008-D?

The Court: Yes.

Mr. Greenberg: We contend that this corporation owns others—

The Court: Oh, now, don't worry about that.

Mr. Greenberg: I suggest a hundred thousand dollars, because of the vast income from these various properties.

The Court: Set that up in a petition.

Mr. O'Brien: And swear to it.

Mr. _____: Fifteen or twenty thousand is sufficient here.

Mr. Greenberg: Let us leave it to your Honor's discretion.

The Court: Oh, no.

Mr. Greenberg: Let us put the Director on the stand; he ought to know something about the income of the property, and I will put Mr. Walters on the stand.

The Court: If we get 20,000 from him, I can increase it.

Mr. _____: Would that be temporary trustee, your Honor?

The Court: Yes. And, set the first meeting for the 22nd—today is the 15th; set the first meeting for the 11th of June.

Mr. O'Brien: If the Court please, I want to keep this record straight?

Mr. Greenberg: At what time?

The Court: Two o'clock.

Mr. O'Brien: You ask about the contents of this petition; one point, of course, raised by the petition, is the question—I do not know whether this is the time but we are doing it, of the summary jurisdiction of the Court to go into that question.

The Court: I see.

Mr. O'Brien: Of possession by the Trustee. Do we understand that you are going into that, now?

The Court: I am going to send that question upstairs again; so, get ready for an appeal, because I am going to take possession.

Mr. O'Brien: Well, the petition which I filed here, your Honor: It is conceded, may it be conceded that it correctly states the facts?

The Court: I do not know what may be conceded.

1172 Mr. O'Brien: If it is not, then I would like to be heard on that petition.

The Court: How do you want to be heard? You are going to say that the Trustee, having been in possession for more than four months, the mortgagee has a kind of title and you cannot get him out?

I do not think that is the law.

I am going to try to get him out.

Mr. Greenberg: May Judge Allen and I have leave to file our petitions?

The Court: This Court cannot function if somebody should stand out and say, "We do not like that kind of a petition."

If this Court cannot get control of that property and function, I want to find out about it.

Mr. O'Brien: I want your Honor to understand the Committee's views.

The Court: Your Committee ought to have this property out of this Court: I do not know who they are, but I am sure they should.

Mr. O'Brien: I think, your Honor, you know about those things as they arise; but, you do not know about them now; and, I do know.

The Court: I do know the 77B statute has been on the books for two and a half years. I know I have 1173 had many of those cases before me, and only have a few of those pending; and, this is one of them.

Mr. Greenberg: May I ask leave to file a petition, Judge Allen and I, intervening, to represent bondholders?

The Court: Yes; get it in quickly.

Mr. McAllister: Mr. Fred Meyers has been in this case during the two and one-half years of its pendency. He was the Trustee appointed by Judge Lindley, to investigate the whole picture.

The Court: I won't hear charges—I want to find out—I want somebody that I know.

Mr. McAllister: He has all of the information with reference to that.

The Court: He may give it to the Trustee.

Mr. McAllister: And, he made a report to Judge Lindley on it, on all of the ramifications of the property in this picture, all of the ramifications of the property in this picture.

Mr. O'Brien: I would not stress that report, if I were you, Mr. McAllister.

The Court: We are going into the question of possession, but I am going to test that fact.

If your Committee were acting with a desire to 1174 get this property out of court, it should be out.

Mr. O'Brien: Your Honor, every time I start to tell your Honor the Committee's position, somebody else speaks—

The Court: I am going to find out whether this Committee wants to get the property out of court.

Mr. O'Brien: It wants a plan, and it wants a plan properly, and it wants it out of court; but, during the time that is going on, all it wants is to maintain its rights of custody, and I am not speaking of the Committee in that sense, but of the Trustee.

The Court: I am not going to reorganize a property when somebody says, "You cannot get possession of the property, Judge, you have not any right to possession."

Now, if it is held I have no right to take possession of the property, do you know what I will do? I will tell you right now: I will vacate the order approving these petitions, and I will dismiss them, because here is one court that is not going to attempt to reorganize property of which it does not have control.

Mr. O'Brien: Your Honor, I understand the Court's position on that—

1175 The Court: The first thing I want to find out is whether this committee really wants this property out of court.

Mr. O'Brien: I do want to say to your Honor, on this point, that when it comes to the reorganization of a property, if there should be a plan and you should approve the plan, and it directs the issuance of securities—

The Court: You are not going to tell me, "If it suits us, we will approve it."

Mr. O'Brien: No, I am not, your Honor; no, no!

The Court: That is the reason I am going to have possession of the property, or the case goes out of court.

Mr. O'Brien: What I meant to say, your Honor—

The Court: I have not thought about this for two or three minutes, but I have thought about it for weeks and months.

Mr. O'Brien: The minute your new securities are issued, you have got control of it.

The Court: I have told you what my attitude is. Now, you can reverse that in one place only, that I know of.

Mr. McAllister: Your Honor, they could have come in at any time in the past two and a half years.

1176 Mr. O'Brien: No, no. On your suit?

Mr. McAllister: Yes.

Mr. O'Brien: That wasn't any good.

The Court: I want to find out whether the Committee really wants this out.

Mr. O'Brien: The petition stands approved, your Honor?

Mr. Goldberg: You called his bluff, Judge.

(Which were all the proceedings had and testimony offered or received on the hearing of the above entitled cause at the time and place aforesaid.)

1177c IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—65811) • •

TRANSCRIPT OF PROCEEDINGS.

The following is a transcript of the proceedings in the above entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, on Monday, the 17th day of May, A. D. 1937, at 2:00 o'clock P. M.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman,
Represented by Tracy Buckingham, Esq., on behalf of Bondholders' Protective Committee;

Messrs. Mort D. & Frank Goldberg, Represented by
Frank Goldberg, Esq., on behalf of the Debtor;
David H. Greenberg, Esq., on behalf of Florence Newman;

J. R. Lasky, Esq., on behalf an Intervening Petitioner.

1177d And thereupon the following proceedings were had herein:—

Mr. Goldberg: I am presenting this Order, Judge, in the Granada matter (handing a document to the Clerk).

The Court: (Examining document.) Has anyone any observations to make?

Mr. Greenberg: I have read this over. I think, your Honor, it fully complies with what you intended to convey, Saturday. It covers the motions that were made in Danville, and it sets them out.

The Court: Who is Florence Newman?

Mr. Greenberg: A bondholder, whom Judge Allen of Danville represented Saturday. We ask leave to file that petition, and also an order—

The Court: I am not going to give you leave to intervene.

I am going to make an order, that you have notice of all motions and proceedings.

Mr. Greenberg: All right.

The Court: That David H. Greenberg and L. T. Allen have leave to file the appearance of Florence Newman, and that there be a rule that said Counsel have notice.

1177e Has anybody any observations to make about this order?

Have you all seen copies of it?

Mr. Goldberg: I have submitted copies, if the Court please, to the Attorney for the Trustee.

The Court: Does anybody have any objection to it?

Mr. Goldberg: I think it covers everything that was brought out Saturday.

The Court: I hear no objection of any kind. The record may so show.

Let us find out, here; whom do you represent?

Mr. Lasky: I represent the petitioning creditors in the involuntary petition filed in Danville, your Honor. My name is J. R. Lasky. I was here Saturday.

Mr. Greenberg: I represent Florence Newman, whose petition we just filed.

The Court: Which one? You represent whom?

Mr. Greenberg: Florence Newman.

The Court: You do not represent either of these petitions (indicating to counsel)?

Mr. Goldberg: No.

The Court: And, whom do you represent?

Mr. Goldberg: I represent the Debtor, the Granada Apartments; Mort D. & Frank Goldberg.

1177f Mr. Buckingham: We are here on the special appearance of the City National Bank and Trust Company of Chicago.

The Court: I call now for objections.

Mr. Goldberg: There is no objections to the order, your Honor, as far as we are concerned.

The Court: What day is this—the 17th?

Mr. Lasky: Yes, sir.

Mr. Greenberg: The 17th.

The Court: Now, I think I want to make some observa-

tions: In a great many cases I have allowed debtors to remain in possession in 77B cases; I have done that where I did not have any special reason for taking the property out of the hands of the Debtor, and where, for reasons of economy, it has seemed desirable to leave the property in the hands of the Debtor.

In this particular case, however, I am told that the property is in the possession of the City National Bank and Trust Company as Trustee under a mortgage; is that correct?

Mr. Goldberg: That is right.

Mr. Lasky: Correct, your Honor.

The Court: I am also told that this property has been in litigation for something like eight years,—al-
1177g though it is two and one-half years since the enactment of this Section, 77B.

I am also told that two-thirds of the first mortgage bonds are and have been in the hands of the Committee.

I cannot see any reason why this property should not have been gotten out of court before this.

I am also told that the Debtor has property scattered over the country, other than the building in question.

I do not know whether those charges are true, it would be remarkable if they were; but, it must be investigated, and they must be investigated by someone in whom the Court has confidence and on whom the Court can rely.

I am told that if I do not appoint a trustee, that, after I have confirmed a plan, if I do confirm a plan, that then the trustee under the mortgage will surrender possession. I am told, in effect, that I have not any jurisdiction to take the property out of the hands of the trustee under the mortgage; that I can go ahead and reorganize, but that I cannot take the property out of the hands of the trustee under the mortgage.

1177h Now, the situation is this: The Court either has the power to take the property out of the hands of the trustee under the mortgage now, or it never has that power, without the consent of the trustee. The result of that statement is that the trustee under that mortgage holds a veto over any action which the Court may take in respect to or as to the approval of the plan of reorganization.

This Court is not, unless it is compelled in some way,—legal way,—going to attempt to reorganize a property of which it does not have control; in other words, this Court is not going to allow any mortgage trustee, or any bondholders' committee, to say to the Court, "Your Honor, we

will acquiesce in any plan which you may approve, provided it is satisfactory to us."

This Court is not going to get into that position!

If it be the law that a mortgage trustee, or a bondholders' committee, can hold a veto power over this Court, and can say to this Court whether this Court can or cannot exercise jurisdiction over a particular piece of property, then,

so far as those properties are concerned which are 1177i in the hands of the mortgage trustee, this Court is going to find that the petitions are not filed in good faith. That would be a very dangerous sort of jurisdiction for this Court to attempt to exercise, where some mortgage trustee, or some bondholders' Committee, who have allowed the property to remain in court for eight years, can say to this Court, "No, your Honor, we will not consent to that plan of reorganization and this jurisdiction which you have been attempting to exercise cannot be exercised unless you amend this plan in the way we think it should be amended."

I am not going to attempt to exercise that sort of jurisdiction; and, if it be the law that I cannot take this property out of the hands of the mortgage trustee, I state to you again, I am going to find that these petitions are not filed in good faith, and I am going to send this property back where it has been for eight years,—and where it will probably remain for the next eight years; but, that won't be the fault of this Court. We can get this property out of this Court in sixty days, if we try; but, I am not going to attempt to get it out unless I have control of it.

Mr. Goldberg: The Debtor is going to cooperate 1177j in every way with the Court.

The Court: I have appointed Mr. Weighstill Woods, who is an attorney of this Court; I am going to instruct him to see what other properties are owned by that corporation, other than the property in Chicago.

Mr. Goldberg: Winston Woods?

The Court: Weighstill Woods.

The Court: Whose reporter is this here?

The Reporter: I am here from Mr. Fuller's office.

The Court: And you are here for what attorneys?

The Reporter: For Mr. Buckingham, I believe.

The Court: Any objection to having this written up for the Debtor?

Mr. Buckingham: Not at all.

The Court: Have it written up for the Debtor, and furnish that to this man?

Mr. Buckingham: Yes, your Honor.

Mr. Goldberg: Incidentally, there was a certain transcript taken in Danville: Do you want that, too?

The Court: No. Have you the transcript?

Mr. Goldberg: Yes.

The Court: You can submit it to the Trustee.

Mr. Goldberg: Yes, sir.

1177k (Which were all the proceedings had in the above entitled cause at the time and place aforesaid.)

1281

CITY NATIONAL EXHIBIT O.

15583

VOB-MCC

State of Illinois, }
County of Cook. } ss.

In the Superior Court of Cook County in Chancery.

To the Honorable, the Judges of Said Court, in Chancery Sitting:

Your Petitioner, Central Republic Trust Company, a corporation, (formerly named Central Republic Bank and Trust Company) as Trustee under Trust Deed recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10161996, respectfully represents unto Your Honors:

1. That it is Trustee under the first mortgage described in the bill of complaint herein as Document No. 10161996 and as such Trustee party to this proceeding as representative of the owners and holders of all of the unpaid bonds, coupons and indebtedness described in and secured by said indenture.

2. That the real estate and premises in said bill of complaint more particularly described, are situate at 525 Arlington Place, Chicago, Illinois, and are improved with a building containing approximately two hundred six (206) rooms and operating as a high-class modern apartment hotel, the apartments consisting of one (1), two (2), three (3) and four (4) rooms, all of which are furnished and the greater number of which are occupied by tenants and guests.

3. That International and Industrial Securities Corporation, as determined by the decree of this court heretofore entered herein, is the owner of and entitled to immediate possession of all of the Pick china and kitchen cases and all of the White In-a-Dor Beds in and about the improvement on said premises, and as well certain of

1282

the carpeting and ozite in certain of the apartments and corridors of said improvement, all of which will more fully appear from the terms and provisions of said decree heretofore entered herein upon the intervening petition of said International and Industrial Securities Corporation.

4. That the said improvement on said premises is specially designed solely for use as a furnished apartment hotel, consisting of Pullman and dining kitchen apartments, and that the said property, the title to which is vested in International and Industrial Securities Corporation, as aforesaid, is indispensable to the operation of said premises as a revenue producing property, and that your petitioner is informed and believes, and therefore represents the fact to be, that the said property could be replaced at a cost of not less than Eighteen Thousand Dollars (\$18,000.) but that the removal of said property and the replacement thereof would not only injure and mar the improvement on said premises, but would result in the loss of most, if not all, of the tenants and guests now occupying said premises, and that your petitioner is informed and believes, and therefore represents the fact to be, that it would take two months or more in which to remove and to replace the said property.

5. That from the time of the filing of the said intervening petition of International and Industrial Securities Corporation the court reserved jurisdiction to determine the fair rental value of said property in the event that the said petitioner should successfully maintain its said petition, and that from the time of the filing of said petition to 1283 this date a substantial sum has accrued to the said petitioner as rental for the use of its said property.

6. That on, to-wit, the 14th day of June, 1930, a decree was rendered by the Circuit Court of Cook County, Illinois, in cause therein numbered B-162869, in favor of Albert Pick & Company and against Granada Hotel Corporation, in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four Cents (\$58,079.44); that your petitioner is informed and believes, and therefore states the fact to be, that thereafter Albert Pick & Company assigned the said decree to the said International and Industrial Securities Corporation, and that the latter company is now the owner thereof, and that the said decree remains wholly unpaid and unsatisfied; that by reason of its alleged claim under and by virtue of said decree, the said Albert Pick & Company filed in the Circuit Court of Cook County, Illinois, as cause No. B-210333, its bill of complaint against Granada

Hotel Corporation and others, praying, among other things, the appointment of a Receiver of and for the real estate and premises herein involved, and your petitioner avers that in the event of the discharge of the Receiver heretofore appointed herein and the appointment of a receiver in said Circuit Court cause last aforesaid, that your petitioner and the holders of the bonds and coupons described in and secured by its said trust deed and their rights and interests in the said premises would be prejudiced.

7. That the said International and Industrial Securities Corporation is ready and willing to compromise, settle and discharge all and each of its claims aforesaid, and to transfer title to the said property, vested in it as aforesaid, to satisfy the said decree in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four Cents (\$58,1284 079.44), to dismiss the said proceedings pending as cause No. B-210333, as aforesaid, and to release and waive any and all claim for rental, as aforesaid, upon payment to it of the sum of Twenty-two Thousand Five Hundred Dollars (\$22,500.), and that your petitioner believes that it is to the best interests of all parties concerned that some settlement be made, and avers that the said property aforesaid, subject only to the prior claim of International and Industrial Securities Corporation, is part of the security intended to be effected by your petitioner's said trust deed.

8. That your petitioner was compelled to and did retain counsel to represent it in and about the defense to the intervening petition of International and Industrial Securities Corporation aforesaid, and in and about the settlement and disposition of said controversy, by reason of which it became liable to pay its counsel a reasonable fee for the service thus rendered, and that said counsel have rendered services of the reasonable value of Two Thousand Dollars (\$2,000.) which amount your petitioner avers is secured by the lien of its said trust deed as so much additional indebtedness thereby secured, prior and superior to the lien of said Trust Deed as security for the payment of bonds and coupons.

9. That there has been set aside as an operating reserve out of the rents, issues, income and profits of and from said premises the sum of Thirteen Thousand Dollars (\$13,000.) which is available for application to such settlement or for such disposition as the court may direct, and that your petitioner is informed and believes, and therefore represents the fact to be, that the difference of Eleven Thousand Five

Hundred Dollars (\$11,500.) necessary to make up the settlement price of Twenty-two Thousand Five Hundred Dollars (\$22,500.) and the sum of Two Thousand Dollars 1285 (\$2,000) to reimburse your petitioner's counsel for such services can be provided through the issuance and disposition of Receiver's Certificate of Indebtedness in the principal sum of Eleven Thousand Five Hundred Dollars (\$11,500.00) to be secured by a first and prior lien upon the said real estate and premises and the proceeds thereof (subject only to the lien of unpaid general and special taxes).

Wherefore, your petitioner prays the suggestion of the court in the premises and recommends the entry of an order

(a) authorizing and directing Chicago Title and Trust Company, Receiver herein, to execute Receiver's Certificate of Indebtedness payable to bearer, bearing date as at the date of issuance, in the principal sum of Eleven Thousand Five Hundred Dollars (\$11,500), payable on or before thirty-six months (36 $\frac{1}{2}$ after date, with interest until paid at the rate of five per cent (5%) per annum, payable at maturity, said Certificate to be a lien on said real estate and premises, the rents, issues and profits thereof, and upon the proceeds of sale thereof (subject only to the lien of unpaid general and special taxes), but paramount and superior to the right, title, interest and lien of your Petitioner's trust deed and of each and every the parties to this proceeding;

(b) authorizing and directing Chicago Title and Trust Company, as such Receiver, upon the sale and disposition of said Certificate, to pay to International and Industrial Securities Corporation, the proceeds of such sale, together with Eleven Thousand Five Hundred Dollars (\$11,500) of the funds so set aside upon said petitioner's executing and delivering release and waiver of any and all claim to the rent, as aforesaid, upon said petitioner's delivering to said Receiver proper satisfaction of the decree aforesaid in the sum of Fifty-eight Thousand Seventy-nine Dollars and Forty-four cents (\$58,079.44) and upon the entry of 1286 proper order dismissing the said proceedings pending in the Circuit Court of Cook County, Illinois, as cause number B-210333, and upon execution and delivery by said petitioner to Central Republic Trust Company, as Trustee under said Document No. 10161996 of appropriate bill of sale selling, transferring and conveying the said property aforesaid title to which has been decreed to be vested in said International and Industrial Securities Corporation,

as aforesaid, and authorizing and directing said Receiver in such events to pay the balance of said sum of Thirteen Thousand Dollars (\$13,000) to Central Republic Trust Company, as Trustee, under said Document 10161996 to reimburse it for the reasonable fees of its counsel as aforesaid.

Central Republic Trust Company,
a corporation, (formerly named
Central Republic Bank and Trust
Company) as Trustee under said
Document 10161996,

By _____

Solicitors for said Petitioner.

State of Illinois, }
County of Cook. } ss.

_____ being first duly sworn on oath deposes and says that he is the duly authorized agent in this behalf of Central Republic Trust Company, as Trustee, Petitioner herein; that he has read the above and foregoing Petition by his subscribed, knows the contents thereof, and that the same is true except as to those matters and things therein alleged to be averred upon information and belief, as to which matters and things he believes them to be true.

Subscribed and sworn to before
me this _____ day of July, 1933.

Notary Public.

1288

CITY NATIONAL EXHIBIT P.

State of Illinois, }
County of Cook. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY IN CHANCERY

William A. Thuma,

vs.

Granada Hotel Corporation,
et al.

} No. 519151

ORDER.

This matter coming on to be heard upon the petition of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, today filed herein, praying for an order authorizing and directing Chicago Title and Trust Company, Receiver herein, to purchase certain property owned by International & Industrial Securities Corporation, and for other relief,

It appearing to the court that due notice hereof has been given to all parties of record, the court being fully advised in the premises finds:

1. That it has jurisdiction of all of the parties to this cause and of the subject matter of this proceeding and of the said petition aforesaid.

2. That the real estate and premises involved in this cause are situate in the City of Chicago, County of Cook and State of Illinois, and described as follows, to-wit:

Lots 32 and 33 of Out Lot "C" in Wrightwood a Subdivision of the South West quarter of Section 28, Township 40 North, Range 14, East of the 3rd P. M.

1289 3. That International & Industrial Securities Corporation is, as found in and by the decree heretofore entered in pursuance of its intervening petition herein, the owner of and entitled to immediate possession of the Pick kitchen and china cases, the White in-a-dor beds, and certain carpeting and ozite contained in the improvement on said real estate and premises, which said property is more particularly described in the said decree aforesaid, and that the said property is indispensable to the operation of the said premises as a revenue producing property.

4. That the said property, title to which is so vested in International & Industrial Securities Corporation, cannot be replaced for less than Eighteen Thousand Dollars (\$18,000) and that it cannot be removed and replaced in less than two months' time and without loss of all or most of the tenants and guests now occupying the said premises.

5. That the said International & Industrial Securities Corporation is the assignee of Albert Pick & Company in whose favor there was rendered in the Circuit Court of Cook County, Illinois, on June 14, 1930, in cause there numbered B-162869, a decree in the sum of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents (\$58,079.44) against Granada Hotel Corporation, and that it is the assignee of Albert Pick & Company, complainant in cause pending in the Circuit Court of Cook County, Illinois against Granada Hotel Corporation and others and there numbered B-210333.

6. That there is due to International & Industrial Securities Corporation a substantial sum on account of rental for its said property from the date of the filing of its intervening petition herein to the present time.

1290 7. That Central Republic Trust Company, as Trustee aforesaid, was compelled to, and did, retain counsel to defend it against the said intervening petition of International & Industrial Securities Corporation and that there is due it as and for the reasonable fees of its said counsel incurred in that regard the sum of Two Thousand Dollars (\$2,000), which the court finds is so much additional indebtedness secured by the lien of its said trust deed prior and superior to the lien of said trust deed as security for the payment of bonds, coupons and other indebtedness.

8. That International & Industrial Securities Corporation is ready and willing to accept Twenty-two Thousand Five Hundred Dollars (\$22,500) in cash in payment for the property aforesaid, and upon payment of that sum, to execute and deliver to said Central Republic Trust Company, as Trustee aforesaid, its bill of sale transferring, selling and setting over unto said Trustee the property owned by it as aforesaid, and to satisfy the said decree in the sum of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents (\$58,079.44), to waive and to release any and all claim on account of rent, and to dismiss the said proceedings pending in the Circuit Court as aforesaid as cause numbered B-210333.

9. That there is available for the purposes of said settlement and for the payment of said petitioner's solicitors' fees out of the rents, issues, income and profits collected of and from the said real estate and premises the sum of Thirteen Thousand Dollars (\$13,000), and that the balance of the funds necessary to effect the said settlement can be procured through the issuance of receiver's certificate of indebtedness, and that it is to the best interests of all parties concerned that the said settlement be made and that the petitioner's said solicitors' fees be paid.

1291 Now, Therefore, It Is Ordered that said Chicago Title and Trust Company, Receiver herein, be, and it is hereby, authorized and directed to issue its receiver's certificate of indebtedness as follows:

"Receiver's Certificate of Indebtedness
Chicago Title and Trust Company,
Receiver.

\$11,500.00

August, 1933:

On or before thirty-six (36) months after date, for value received, Chicago Title And Trust Company, a corporation, not individually but as receiver, appointed by virtue of order of the Superior Court of Cook County, Illinois, in cause there pending entitled William A. Thuma vs. Granada Hotel Corporation, et al., and numbered 519-151, of and for the real estate and premises situated in the City of Chicago, County of Cook and State of Illinois, described as follows, to-wit:

Lots Thirty-two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section 28, Township 40 North, Range 14 East of the 3rd P. M.

promises to pay to the order of Indemnity Insurance Company of North America, a corporation, Eleven Thousand Five Hundred Dollars, with interest at 5% per annum payable at maturity.

This certificate is issued under and by virtue of an order of the Superior Court of Cook County, Illinois, entered on the day of August, A. D. 1933, in said cause and subsisting first and prior lien upon said real estate and premises hereinabove described and upon the proceeds of any sale thereof (subject only to the lien of unpaid general taxes), and upon the rents, issues, income and profits of and from said property as to such rents,

issues, income and profits however subject to the prior lien of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's office of Cook County, Illinois, as Document 10161996 to the extent of \$8500.00 of the first rents collected by said receiver and available for distribution over and above rents required to be applied by said receiver to unpaid taxes, and such lien subject only to the exceptions above noted is prior and superior to the right, title, interest and lien in, to or upon said premises of each and every the parties to said cause whether parties complainant, cross complainant, defendant or cross defendant or otherwise.

This certificate shall likewise constitute a lien upon any interest which Central Republic Trust Company, as Trustee under said document No. 10161996, has or may hereafter during the pendency of this suit acquire in and to any or all furniture, furnishings, equipment and other personal property in and about the improvement on said real estate and premises, which said lien shall be prior and superior to the right, title, interest or lien in, to or upon said personal property of each and every the said parties to this proceeding.

1292 If said property, real or personal, is purchased at any foreclosure sale pursuant to a plan of reorganization or readjustment involving said property, every holder of this certificate, by the acceptance hereof, agrees, upon request of any one thereunto authorized pursuant to said plan, to accept in lieu hereof a note for the unpaid principal hereof and interest accrued hereon issued by any one who shall have acquired a Master's Certificate issued pursuant to such sale, or who shall have acquired title to said property in pursuance of such plan, which note shall be secured by a lien on said property or shall be secured by a lien on such Master's Certificate, and on said personal property, if any, which lien in either event shall be subject only to the lien of unpaid general taxes and special assessments (and, in the case of said personal property, if any, subject only to the lien of chattel mortgage recorded in the recorder's office of Cook County, Illinois, as Document number _____), and which note shall be payable on or before four (4) years from the date of this certificate and shall bear interest at the same rate as this Receiver's Certificate of Indebtedness payable at the maturity of said note.

No assignment of this certificate shall be effective for

any purpose without prior written notice thereof by the assignor to the said receiver or its successor.

This certificate is executed by Chicago Title & Trust Company, not personally, but as receiver aforesaid, in the exercise of the power and authority conferred upon it as such receiver, and is payable only out of the properties specifically described in this receiver's certificate.

No personal liability shall be asserted or be enforceable against the Chicago Title & Trust Company, because of, or in respect to this Receiver's Certificate or the making, issue or transfer thereof, and each original and successive holder of this Receiver's Certificate accepts the same upon the conditions herein above described.

Chicago Title & Trust Company, not individually, but as Receiver in the cause entitled William A. Thuma vs. Granada Hotel Corporation, et al., Superior Court No. 519151.

By _____

It Is Further Ordered that said Receiver attempt to sell the said certificate of indebtedness, and that upon the sale thereof, the proceeds of such sale, together with the said sum of Thirteen Thousand Dollars (\$13,000) available as aforesaid out of the rents, issues, income and profits, be paid Twenty-two Thousand Five Hundred Dollars (\$22,500) to International & Industrial Securities Corporation, provided that said corporation shall first execute and deliver to said Receiver bill of sale, selling, transferring and setting over to Central Republic Trust Company, as Trustee under said Document 10161996, the said kitchen cases, china cases, in-a-dor beds, carpeting and ozite, together with proper satisfaction piece pertaining to the said decree of Fifty-eight Thousand Seventy-nine Dollars Forty-four Cents (\$58,079.44), and provided also that said International & Industrial Securities Corporation first dismiss the said cause No. B-210333 and release and waive any and all claim to rent for said property on account of the use thereof by said Receiver herein since the date of the filing of its said intervening petition, and that the balance of Two Thousand Dollars (\$2,000) be paid to Central Republic Trust Company, as Trustee aforesaid, for the use and benefit of its said counsel on account of the services aforesaid.

It Is Further Ordered, Adjudged And Decreed that the said receiver's certificate of indebtedness when so issued

and delivered shall constitute a valid and subsisting lien upon said real estate and premises and the proceeds of sale thereof subject and interior only to the lien of unpaid general and special taxes, but prior and superior to the right, title, interest, claim or lien of each and every the parties to this proceeding.

It Is Further Ordered that the said certificate when so issued and delivered shall likewise constitute a valid and subsisting lien and charge upon the rents, issues, income and profits to be thereafter collected by said receiver during the pendency of this suit and during the full period of redemption allowed by law, which said lien as to rents, issues, income and profits however shall be subject to the prior lien of Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's office of Cook County, Illinois, as Document 10161996 to the extent of \$8500.00 of the first rents collected by said receiver and available for distribution over and above rents required to be applied by said receiver to unpaid taxes.

It Is Further Ordered that said certificate when so issued and delivered shall likewise constitute a lien 1294 upon any interest which Central Republic Trust Company, as Trustee under said document 10161996, has or may hereafter during the pendency of this suit acquire in and to any or all furniture, furnishings, equipment and other personal property in and about the improvement on said real estate and premises, which said lien shall be prior and superior to the right, title, interest or lien in, to or upon said personal property of each and every the said parties to this proceeding.

Dated at Chicago, Illinois, this 11th day of August, 1933.

Enter:

Williams,
Judge.

1299

CITY NATIONAL EXHIBIT R.

State of Illinois, }
County of Cook. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

William A. Thuma,
Complainant,

vs.

Granada Hotel Corporation, et al.,
Defendants.

Central Republic Trust Company,
etc.,

Cross-complainant,

vs.

Granada Hotel Corporation, et al.,
Cross-defendants.

In Chancery.
Bill.

No. 519151.
Cross-Bill.

ORDER.

This matter coming on to be heard upon the motion of cross-complainant, Central Republic Trust Company, as Trustee under Document 10161996, for the surrender to it as such Trustee by the Receiver herein of possession of the real estate and premises described in the cross-bill of complaint herein and of the personal property in said premises described in the supplement to the said cross-bill of complaint of Central Republic Trust Company as such Trustee, and upon stipulation of the parties hereto, including Indemnity Insurance Company of North America, the holder of the Receiver's certificate of indebtedness, which stipulation is now filed in open court;

It Is Ordered that Chicago Title and Trust Company, Receiver herein, forthwith surrender to Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, possession of the following described real estate and premises, to wit:

Lots Thirty-two (32) and Thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

and of the furniture, equipment, and personal property in and about said premises, including the personal property described in the cross-bill of complaint of Central Republic Trust Company, as Trustee aforesaid, as supplemented.

It Is Further Ordered that Chicago Title and Trust Company, Receiver, file its final report and account within thirty (30) days, and that upon the coming in and approval of said final report and account the funds in the possession of said Receiver, after deduction of its reasonable fees 1300 and those of its counsel to be fixed by the court, be paid by the Receiver as follows: Twenty-five Hundred Dollars (\$2500) to Central Republic Trust Company, as Trustee under said Document 10161996, and the balance towards the satisfaction of the certain Receiver's certificate of indebtedness issued to and held by Indemnity Insurance Company of North America under and pursuant to order entered herein on the 11th day of August, 1933, said certificate of indebtedness to be presented to the Receiver for endorsement thereon of such payment or credit.

It Is Further Ordered that Central Republic Trust Company, as Trustee under said Document 10161996, not individually but as such Trustee, assume liability for the payment of any balance remaining due under said Receiver's certificate of indebtedness after the application as aforesaid of such rents, issues, income, and profits, and that the said certificate remain a lien in pursuance of its terms and provisions and of said order of August 11, 1933 for the payment of such balance.

It Is Further Ordered that upon the coming in and approval of the Receiver's final report and account and upon payment as aforesaid by the Receiver of rents, issues, income, and profits to the said Trustee and in reduction of the amount due on account of said certificate, the said Receiver be discharged as such Receiver and of and from any and all liability on account of the Receiver's certificate of indebtedness aforesaid.

It Is Further Ordered that nothing herein contained shall be construed to impose upon Central Republic Trust Company, individually, any personal liability of any kind whatsoever for the payment out of its own funds of the said Receiver's certificate of indebtedness or any part thereof, but that in effect the said Trustee shall be, and it is, as such Trustee substituted for Chicago Title and Trust Company as Receiver in respect of the obligation to pay the balance so assumed and that the Trust property so ordered to be surrendered to said Trustee shall continue liable for

the payment of such balance in accordance with the terms, provisions, and conditions of said certificate of indebtedness.

Enter:

Harry A. Lewis.

Entered March 16, 1934.

To City National Bank and Trust Company of Chicago:

The above and foregoing is a true and correct copy of an order entered in the Superior Court of Cook County on the date indicated therein.

Dated September 29, 1936.

Defrees, Buckingham, Jones & Hoffman,

By _____

EXCERPTS FROM CITY NATIONAL EXHIBIT T.

1309 filed herein be and it is hereby in all respects approved.

And it appearing to the court that the law firm of Igoe and Flaherty, solicitors for William L. O'Connell, Receiver of Central Republic Trust Company, have performed legal services for and in connection with said trust estate for which they should be compensated out of said trust estate and that the reasonable value of such services is the sum of \$150.00.

It Is Further Ordered that said William L. O'Connell, as Receiver of Central Republic Trust Company as aforesaid, be and he is hereby authorized and directed to pay to Messrs. Igoe and Flaherty the said sum of \$150.00 and to deduct said sum from the total of \$11,503.60 in his possession as such Receiver in connection with said trust as set forth in said final report and account and to deliver the balance of such funds in the amount of \$11,353.60, together with the chattel mortgage note in the amount of \$75,000, the chattel mortgage securing said note recorded in the Recorder's Office of Cook County, Illinois, as Document No. B-2702627 and the second mortgage bonds of Granada Hotel Corporation in the principal amount of \$30,000, all as set forth in said final account, to City National Bank and Trust Company of Chicago, the successor Trustee heretofore appointed herein.

1310. It Is Hereby Further Ordered that upon the delivery of the balance of the funds in his possession to the successor Trustee as aforesaid, said William L.

O'Connell, individually and as Receiver of Central Republic Trust Company, and Central Republic Trust Company, be forever discharged from any and all liability under or in connection with said Trust Indentures or the administration of said trust.

It Is Further Ordered that the court reserves jurisdiction for the purpose of fixing and allowing fees for services rendered by Central Republic Trust Company as such Trustee and by William L. O'Connell as such Receiver and for the purpose of making provision for the payment of such fees and the moneys advanced and obligations incurred by said Central Republic Trust Company as such Trustee and by William L. O'Connell as such Receiver, together with costs and expenses of this proceeding including master's fees and the fees of their solicitors.

Dated: February 11, 1935.

Enter: Lewis,
Judge.

1311 State of Illinois }
County of Cook } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

Central Republic Trust Company, a corporation, Trustee,	} No. 519151.
Complainant,	
vs.	
Granada Hotel Corporation, et al.,	} Defendants.

FINAL ACCOUNT AND REPORT OF WILLIAM L. O'CONNELL, RECEIVER OF CENTRAL REPUBLIC TRUST COMPANY.

Pursuant to order of court heretofore entered, William L. O'Connell, as receiver of Central Republic Trust Company, trustee under trust indenture filed in the Recorder's Office of Cook County, Illinois, as Document No. 10161996, and under a supplemental trust indenture filed in the Recorder's Office of Cook County, Illinois, as Document No. 10161997, more fully described in the bill of complaint filed herein, hereby submits his final report and account of the moneys and properties in his hands as re-

ceiver of Central Republic Trust Company as trustee as aforesaid.

On or about March 22, 1934 Central Republic Trust Company, as trustee, went into possession of the premises mortgaged by said trust indenture and said indenture supplemental thereto, being the premises located at 535 Arlington Place, in the City of Chicago, Illinois, and thereafter operated said premises until January 3, 1935, 1312 the date upon which a successor trustee was appointed to succeed Central Republic Trust Company as trustee under said trust indenture and said indenture supplemental thereto. During said period the net cash receipts of said trustee from the operation of said premises were \$13,974.89 and in addition thereto said trustee received the sum of \$2,021.66 from other sources, making an aggregate of \$16,996.55, total cash received by said trustee. There was disbursed by said trustee during said period the sum of \$6,618.59, leaving a cash balance in the hands of William L. O'Connell, as receiver of Central Republic Trust Company as such trustee, of \$10,377.96, as is more fully set forth in the itemized accounting marked Schedule "A" and attached hereto.

In addition to the funds in the possession of the trustee as hereinabove set forth William L. O'Connell as receiver of Central Republic Trust Company, as trustees as aforesaid, has in his possession cash in the following amounts:

\$1,000.00 representing balance of cash on hand for payment of bonds Nos. 7 and 8 for \$500.00 each maturing September 1, 1931 which have not as yet been presented for payment;

\$61.94, balance of cash on hand for payment of accrued interest on bonds due September 1, 1931;

\$21.00 representing the balance of cash on hand for payment of coupons due from March 1, 1930 to September 1, 1931 which have not as yet been presented for payment; and

\$42.70 representing the balance of cash on hand to cover payment of 2% income tax liability on coupons on bonds secured by said trust indenture which have not as yet been presented for payment.

Said William L. O'Connell further reports that he has in his possession the following documents and securities belonging to said trust estates:

1313 1. Chattel mortgage note due September 2, 1933 for Seventy-five Thousand Dollars (\$75,000.00).

2. Chattel Mortgage securing the above note recorded in the Recorder's Office of Cook County, Illinois, as Document No. B-2702627.

3. Granada Hotel Corporation second mortgage bonds due September 1, 1933 with March 1, 1930 and subsequent interest coupons attached in the amount of \$30,000.00. The above properties are held as collateral security for the indebtedness outstanding under the trust indenture and supplemental indenture hereinabove described.

Said William L. O'Connell, as receiver as aforesaid, further reports to the court that Central Republic Trust Company, as trustee, has heretofore instituted and conducted foreclosure proceedings upon the trust indenture and said indenture supplemental thereto and the chattel mortgage hereinabove described, which proceedings are now pending herein and that in the conduct of said litigation said trustee has performed various duties and rendered various services, for which it is entitled to be compensated and has incurred various obligations, all of which compensation and obligations under the provisions of said trust indenture and said indenture supplemental thereto and said chattel mortgage constitutes an indebtedness of the mortgagor for which Central Republic Trust Company as trustee and William L. O'Connell as its receiver have a first and prior lien upon the real estate, premises and chattel property described in said indentures and chattel mortgage and said William L. O'Connell as such receiver

requests that reasonable fees for the services of Central Republic Trust Company as trustee be determined and fixed by this court and that such fees, together with its expenses and the reasonable fees and advances of its solicitors be included in the indebtedness of the mortgagor as may hereinafter be determined by decree and that it may be determined that William L. O'Connell, as receiver as aforesaid, and Central Republic Trust Company, as trustee, have a first and prior lien upon the real estate and premises described in said trust indentures and a first and prior lien upon the chattel property described in said chattel mortgage and on the proceeds of any sale of said mortgage premises which may hereafter be had herein.

William L. O'Connell, as receiver of Central Republic Trust Company, trustee as aforesaid, has employed Igoe and Flaherty as his solicitors and said solicitors have performed valuable services for him in connection with the administration of said trust for which services said

solicitors are entitled to reasonable fees, the payment of which should be provided for out of said trust estate, and there has been attached hereto a certificate of services rendered by said solicitors as aforesaid, and William L. O'Connell, as such Receiver, requests that the court may determine the reasonable value of such services and may authorize and direct him, as such receiver, to pay the same and deduct the amount thereof from the moneys in his hands as hereinabove set forth, and that the balance of the moneys in his hands, after the deduction of the fees of his said solicitors and said other properties hereinabove mentioned, be ordered paid and delivered to the successor trustee heretofore appointed herein.

1315 William L. O'Connell, as receiver of Central Republic Trust Company, as trustee as aforesaid, requests that this report and account be approved by the court and that an order be entered herein forever discharging him, individually and as receiver of Central Republic Trust Company, and Central Republic Trust Company from any and all liability as trustee under said indentures or in connection with the administration of said trust estate.

Respectfully submitted,
William L. O'Connell,
as receiver of Central Republic Trust Company.

By _____
His duly authorized agent.

State of Illinois }
County of Cook } ss.

Chas. H. Albers, being first duly sworn, on oath deposes and says that he is the duly authorized agent of William L. O'Connell, receiver of Central Republic Trust Company, and that the foregoing final account and report, by him subscribed, is a true and correct account of the moneys and securities in the possession of William L. O'Connell, as receiver of Central Republic Trust Company as aforesaid.

Subscribed and sworn to before me this _____
day of February, A. D. 1935.

Notary Public.

1344 CITY NATIONAL EXHIBIT "U".

18134

1-5-34

VOB:NA

This Memorandum of Agreement made as of the 1st day of January, 1933 by and between Granada Apartments, Inc., and Warren-Hart Apartments Building Corporation, corporations organized and existing under and by virtue of the laws of the State of Illinois,

Witnesseth: That,

For and in consideration of the payment by Central Republic Trust Company, as Trustee under the first mortgage indenture on the property of Warren-Hart Apartments Building Corporation to Granada Apartments, Inc., of certain moneys deposited with Central Republic Trust Company, as Trustee, and for other good and valuable considerations, It Is Agreed by and between the parties hereto that the amount payable to Granada Apartments, Inc. by Warren-Hart Apartments Building Corporation for the year 1933 for service rendered it by Granada Apartments, Inc. in the furnishing of heat, refrigeration, hot and cold water, and mechanical maintenance shall not exceed Seventy-two Hundred Dollars (\$7200), including any funds so made available as aforesaid by Central Republic Trust Company, as Trustee.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective Presidents, attested by their respective Secretaries, and their respective corporate seals to be hereunto affixed this 5th day of January, 1934.

Granada Apartments, Inc.,

By Roger W. Walters,

President.

Attest:

George U. Nichols,

Secretary.

Warren-Hart Apartments Building Corporation,

By Edward Hall,

President.

Attest:

Cecil Clark,

Secretary.

1487

CITY NATIONAL EXHIBIT W.

1488

**The Arlington Hotel
530 West Arlington Place
Chicago**

The purpose of this report is to determine the proper allocation of costs for services to the Arlington Hotel, from the total operating costs of the Granada Hotel for the same services, the Granada Hotel providing the service to the Arlington Hotel.

In the following estimates, the figures of plant costs—Boiler Plant \$19,000.00, Refrigeration Plant \$16,280.00, and Water Pumps, Heaters, Tanks, etc., \$9,230.00—are taken from previous report made in 1929 by S. R. Lewis. The costs for labor, fuel, water, and electricity, are annual averages for the years 1933 to 1936 inclusive, and are from audited records.

The amounts of direct radiation surfaces for the respective buildings are from survey and supplemental survey made by Irving Brooke.

The number of ice boxes and plumbing outlets is taken from City National Bank records.

1489

**SUMMARY OF PLANT OPERATING COSTS FOR GRANADA,
ARLINGTON AND LINCOLN PARK MANOR.**

Heating.....	\$ 8,964.00
Refrigeration.....	8,413.00
Hot Water.....	3,235.00
Cold Water.....	1,761.00

\$ 22,373.00 total for three hotels

**RECAPITULATION OF COSTS FOR SERVICES TO ARLINGTON
HOTEL.**

Month	Heating		Refrigeration	Hot Water	Cold Water	Total
	%	Cost				
January.....	20.0	\$ 510.94	\$ 238.38	\$81.95	\$44.61	\$ 875.88
February.....	17.4	444.52	238.38	81.95	44.61	809.46
March.....	14.3	365.32	238.38	81.95	44.61	730.26
April.....	8.8	224.81	238.38	81.95	44.61	589.75
May.....	3.9	99.63	238.38	81.95	44.61	464.57
June.....			238.38	81.95	44.61	364.94
July.....			238.38	81.95	44.61	364.94
August.....			238.38	81.95	44.61	364.94
September.....			238.38	81.95	44.61	364.94
October.....	5.6	143.06	238.38	81.95	44.61	508.00
November.....	12.4	316.78	238.38	81.95	44.61	681.72
December.....	17.6	449.62	238.38	81.95	44.61	814.56
Total.....	100%	\$2,554.68	\$2,864.40	\$983.45	\$535.30	\$6,933.96

To these charges to the Arlington Hotel, a profit of 10% could reasonably be charged = \$635.30 average per month.

1490

SEGREGATION OF COST ITEMS

Labor

Labor for refrigeration 50% = \$1,230.00
 Labor for heating 40% = 984.00
 Labor for water services 10% = 246.00

\$2,460.00 total per year

Water

Water for refrigeration:

1.25 gallons per minute per ton for 30 tons = 2,250 gallons per hour.

Average daily operation of plant = 15½ hours.

For 365 days = 5,475 hours.

5,475 hours times 2,250 gallons = 12,318,000 gallons or 1,643,000 cubic feet.

1,643,000 cubic feet @ \$.50 per M- = \$821.50.

Water for domestic hot water:

Total water used per year 4,120,000 cubic feet = \$2,060.00

Total water used for refrigeration 1,643,000 cubic feet = 821.50

For total domestic use 2,477,000 cubic feet
 For hot water use (estimated) 35% 867,000 cubic feet = 433.50
 For cold water use (estimated) 65% 1,610,000 cubic feet = 805.00

Fuel

Fuel oil for water heating:

Fuel oil for heating 867,000 cubic feet of water from 50° average to 125°

75 B.T.U. plus (10% for radiation losses) 7.5 B.T.U. = 82.5 B.T.U. added per lb.

Fuel oil having 150,000 B.T.U. per gallon = 112,500 B.T.U. at 75% burner and boiler efficiency for heating water.

$\frac{867,000 \times 82.5}{112,500} = 39,600$ gallons @ \$.0475 = \$1,880.00

Total oil per year = 151,700 gallons = \$7,210.00

For Hot Water = 39,600 gallons = 1,880.00

For Heating = 112,100 gallons = 5,330.00

1491

SEGREGATION OF COST ITEMS (Con't.)

Electrical

1 oil burner motor $1\frac{1}{2}$ H.P. 17 hrs. per day 220 days = 4,180 K.W. hr.
 1 oil burner motor $1\frac{1}{2}$ H.P. 10 hrs. per day 20 days = 224 K.W. hr.
 1 oil pump motor $\frac{1}{2}$ H.P. 17 hrs. per day 220 days = 1,386 K.W. hr.
 1 vacuum pump motor 2 H.P. 6.5 hrs. per day 220 days = 2,244 K.W. hr.

8,034 K.W. hr.

at 90% load factor = 7,230 K.W. hr.

Electric current for refrigeration:

1 — 60 H.P. motor $15\frac{1}{2}$ hrs. per day 365 days = 254,400 K.W. hr.
 1 — 10 H.P. motor 24 hrs. per day 365 days = 65,260 K.W. hr.

319,960 K.W. hr.

at 80% load factor = 255,700 K.W. hr.

Electric current for water heating:

1 — $\frac{1}{2}$ H.P. oil pump motor 6 hrs. per day 145 days = 320 K.W. hr.
 1 — $\frac{1}{2}$ H.P. oil burner motor 6 hrs. per day 365 days = 810 K.W. hr.
 1 — 3 H.P. pump motor 24 hrs. per day 365 days = 19,600 K.W. hr.

20,730 K.W. hr.

at 80% load factor = 16,550 K.W. hr.

Electric current for cold water pumping:

1 — 15 H.P. pump motor 4 hrs. per day 365 days = 16,350 K.W. hr.

at 80% load factor = 13,000 K.W. hr.

Total K.W. Hr. for all Power 322,260 K.W. Hr. 1 year
 For plant 292,480 K.W. Hr. 1 year

For elevator, laundry, etc. 29,780 K.W. Hr. 1 year

1492

Cost of Producing Steam for Heating—Per Annum

112,100 gallons fuel oil @ \$.0475.....	\$ 5,330.00
Labor.....	984.00
7,230 K. W. hr. @ \$.016.....	115.00
Maintenance and repairs.....	350.00
Insurance and taxes—2½% on \$19,000.00.....	475.00
Interest 6%, amortization 3%, on \$19,000.00.....	1,710.00
	<hr/>
	\$ 8,964.00

Cost of Refrigeration Per Annum

Labor.....	\$ 1,230.00
255,700 K. W. hr. @ \$.016.....	4,090.00
1,643,000 cu. ft. water @ \$.50 per M.....	821.00
Maintenance and repairs.....	400.00
Insurance and taxes—2½% on \$16,280.00.....	407.00
Interest 6%, amortization 3%, on \$16,280.00.....	1,465.00
	<hr/>
	\$8,413.00

Cost of Hot Water

Labor 5% of total.....	\$ 123.00
Water 867,000 cu. ft. @ \$.50 per M.....	433.50
16,550 K. W. hrs. @ \$.016.....	264.00
39,600 gallons fuel oil @ \$.0475.....	1,880.00
Maintenance and repairs.....	50.00
Insurance and taxes—2½% on \$4,230.00.....	105.00
Interest 6%, amortization 3%, on \$4,230.00.....	380.00
	<hr/>
	\$ 3,235.00

Cost of Cold Water

Labor 5% of total.....	\$ 123.00
Water 1,610,000 cu. ft. @ \$.50 per M.....	805.00
13,000 K. W. hrs. @ \$.016.....	208.00
Maintenance and repairs.....	50.00
Insurance and taxes—2½% on \$5,000.00.....	125.00
Interest 6%, amortization 3%, on \$5,000.00.....	450.00
	<hr/>
	\$ 1,761.00

1493

Proportion of Services Chargeable to Respective Hotels

Heating.....			\$ 8,964.00
Granada.....	12,058 sq. ft. radiation=49.1%		
Arlington.....	7,038 sq. ft. radiation=28.5	= \$ 2,554.70	
Lincoln Park Manor...	5,516 sq. ft. radiation=22.4		
Refrigeration.....			\$ 8,413.00
Granada.....	96 ice boxes	=42.4%	
Arlington.....	77 ice boxes	=34.0	= \$ 2,860.40
Lincoln Park Manor...	53 ice boxes	=23.6	
Hot Water.....			\$ 3,235.00
Granada.....	615 plumbing outlets	=50.5%	
Arlington.....	370 plumbing outlets	=30.4	= \$ 983.45
Lincoln Park Manor...	233 plumbing outlets	=19.1	
Cold Water.....			\$ 1,761.00
Granada.....	826 plumbing outlets	50.5%	
Arlington.....	498 plumbing outlets	30.4	= \$ 535.30
Lincoln Park Manor...	314 plumbing outlets	19.1	

Prepared by:

O. W. Dauber

O. W. Dauber,
Consulting Engineer,
224 So. Michigan Ave.,
Chicago, Illinois.

October 7, 1937.

1580

CITY NATIONAL EXHIBIT Z.

Memorandum of Agreement

Between

Arlington Apartment Building Corporation, an Illinois
Corporation and Mateer Hotels, Inc., an Illinois
Corporation.

Feb. 9, 1924.

This Agreement made and entered into this 9th day of February, A. D. 1924, by and between Arlington Apartment Building Corporation, a corporation duly authorized and existing under the laws of the State of Illinois, having its principal place of business at Arlington Place, in the City of Chicago, in the County of Cook and State of Illinois, party of the first part, (herein sometimes referred to as "Arlington Corporation"), and Mateer Hotels, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal place of business at 525 Arlington

Place, in said City of Chicago, (herein sometimes referred to as "Mateer Corporation"), party of the second part, Witnesseth:

Whereas, Fred D. Mateer of Chicago, Illinois, (herein referred to as "Mateer"), owns all of the Capital Stock of Mateer Corporation (except Directors' qualifying shares), and owns substantially all of the common capital stock of Arlington Corporation and of Granada Hotel Corporation and Lincoln Park Manor Building Corporation, all Illinois corporations, which said Corporations are engaged in the construction, ownership and/or operation of hotels and/or apartment buildings located in said City of Chicago, on premises contiguous to or adjoining each other, and

Whereas, Mateer Corporation represents that it has made arrangements with said Granada Hotel Corporation and said Lincoln Park Manor Building Corporation whereby it is contemplated that Mateer Corporation will furnish heating, refrigeration, electric light and power, water, gas and telephone services jointly to Arlington Corporation, said Granada Hotel Corporation and said Lincoln Park Manor Building Corporation, (which said three corporations are hereinafter sometimes referred to as "Consumer Corporations"), through a single plant specially equipped for such services and controlled and operated by Mateer Corporation, and represents further that it is in a position to furnish economical and efficient service to Consumer Corporations through a joint arrangement to be evidenced by contracts to be presently entered into by Mateer Corporation with each of Consumer Corporations, and

Whereas, Arlington Corporation is engaged in the ownership and operation of an apartment hotel building (hereinafter sometimes referred to as "Arlington Building"), located upon the premises commonly known as 530-532 Arlington Place, the legal description of which said premises is as follows:

Lct 34 and the E. 11 Ft. of lot 35 in the Sub. of Out-lot "C" of Wrightwood, being a Sub. of the S. W. $\frac{1}{4}$ of Sec. 28, Township 40 N., Range 14, E. of the 2nd P. M., in the City of Chicago, County of Cook, State of Illinois.

and is desirous of procuring heating, refrigeration, electric light and power, water, gas and telephone services from Mateer Corporation for use in the operation of Arlington Building.

Now, Therefore, in consideration of the premises and of the covenants and agreements herein contained, and of the sum of One Dollar (\$1.00) paid by Arlington Corporation to Mateer Corporation, and for and upon other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto mutually agree as follows:

First: Mateer Corporation agrees to furnish to Arlington Corporation all heating, refrigeration, electric light and power, hot and cold water, gas, and telephone services required by Arlington Corporation in connection with the operation and maintenance of Arlington Building. 1581 Such services are to be rendered by Mateer Corporation to Arlington Corporation for a period of thirteen years from and after February 9, 1924.

Second: Mateer Corporation is to be reimbursed by Arlington Corporation for a due proportion of the actual costs and expenses incurred by Mateer Corporation in furnishing the services hereinabove described, and in the operation of the plant and equipment required therefor, as hereinafter more fully provided, and is to receive from Arlington Corporation in addition thereto compensation for and on account of services rendered by Mateer Corporation in managing, supervising, operating, maintaining and financing such services, together with the machinery, equipment and supplies necessary therefor, such compensation to be based upon a percentage of certain of the costs to Mateer Corporation of joint services furnished by it, as hereinafter specifically provided.

Third: For and during the period(s) in which Mateer Corporation shall furnish heating service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all heating service furnished by it to Consumer Corporation and others (including, without limiting the generality of the foregoing language, expenditure for fuel, rental of premises on which heating plant and equipment operated by Mateer Corporation are located, wages of employees engaged in heating service, cost of maintenance and repairs of machinery and equipment involved in heating service, and all other expenses incidental to such service), based upon the proportion which the number of square feet of radiation in use in Arlington Building at any time bears to the total number of square feet of radiation used in Arlington Building and other hotels and buildings for

which like heating service is being furnished by Mateer Corporation at such time, and in addition hereto, Arlington Corporation agrees to pay Mateer Corporation a sum equal to 15% of such share of said expenses of heating service payable by Arlington Corporation as provided in the within paragraph.

Fourth: For and during the period(s) in which Mateer Corporation shall furnish refrigeration service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all refrigeration service furnished by it to the Consumer Corporations and others, (including, without limiting the generality of the foregoing language, expenditures for labor, supplies, maintenance and repairs of refrigeration equipment, and all other expenses incidental to refrigeration service), based upon the proportion which the number of square feet of refrigeration units used in the Arlington Building and supplied by Mateer Corporation bears to the total number of square feet of refrigeration units used in other hotels and buildings for which like refrigeration service is furnished by Mateer Corporation at such time, and in addition hereto, Arlington Corporation agrees to pay Mateer Corporation a sum equal to 15% of such share of said expenses of refrigeration service payable by Arlington Corporation as provided in the within paragraph.

Fifth: For and during the period(s) in which Mateer Corporation shall furnish electric lighting and power service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all electric lighting and electric power service furnished by it to the Consumer corporations and others, (including, without limiting the generality of the foregoing language, meter cost of electric current and expenditures for renewals of fuse plugs and lamps, motor repairs, maintenance and repairs of electric lighting and power equipment, and all other expenses incidental to electric lighting and electric power service), based upon the proportion which the quantity of electric current used in Arlington Building and furnished by Mateer Corporation at any time bears to the total quantity of electric current used in Arlington Building and other hotels and buildings for which like service is

being furnished by Mateer Corporation at such time, and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of such share of said expenses of electric services payable by Arlington Corporation as provided in the within paragraph.

Sixth: For and during the period(s) in which Mateer Corporation shall furnish hot and cold water service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by Mateer Corporation with respect to all hot and cold water service furnished by it to the Consumer Corporations, and others (including without limiting the generality of the foregoing language, meter cost of water and expenditures for filtration, maintenance and repairs of circulating pumps, pressure pumps, filters, equipment for heating water, and all other equipment used in supplying hot and cold water, supplies and all other expenses incidental to such water service), in the proportion which the number of water outlets used in Arlington Building at any time bears to the total number of such water outlets in use in Arlington Building and other hotels and buildings for which like water service is being furnished by Mateer Corporation at such time, and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of such share of the expenses of water service to be paid by Arlington Corporation as provided in the within paragraph.

Seventh: For and during the period(s) in which Mateer Corporation shall furnish gas service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses actually incurred by the Mateer Corporation with respect to all gas service furnished by Mateer Corporation to the Consumer Corporations and others, (including, without limiting the generality of the foregoing language, meter cost of gas, and expenditures for maintenance and repair of equipment used in supplying gas service), based upon a proportion to be determined by either of the respective methods described in subparagraphs (a) and (b) of this Seventh paragraph, at the discretion of Mateer Corporation.

(a) Arlington Corporation to pay a share of such expenses of gas service based upon the proportion which the number of gas outlets in use in Arlington Building at

any time bears to the total number of gas outlets used in Arlington Building and other hotels and buildings for which like gas service is being furnished by Mateer Corporation at such time, or

(b) Arlington Corporation to pay a share of such expenses if gas service based upon the proportion which the amount of gas used in Arlington Building at any time bears to the total amount of gas used in Arlington Building and other buildings for which like gas service is being furnished by Mateer Corporation at such time, as shown by readings of intermediary gas meters installed by Mateer Corporation,

and in addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a sum equal to 15% of said share of the expenses of gas service payable by Arlington Corporation as provided in the within paragraph.

Eighth: For and during the period(s) in which Mateer Corporation shall furnish telephone service for Arlington Building hereunder, Arlington Corporation agrees to pay to Mateer Corporation, for and on account of telephone service furnished by Mateer Corporation for Arlington Building, as follows:

\$.75 a year for each terminal in use at Arlington Building, provided that if the charge of the telephone 1583 company which at any time is furnishing telephone service to Mateer Corporation is increased or decreased, the said charge to Arlington Corporation for each terminal per year shall be likewise increased or decreased and in the same amount;

The actual cost of all Long Distance tolls originating in Arlington Building and the actual cost of all telegrams originating in Arlington Building charged on statements for telephone service rendered to Mateer Corporation.

The sum of 7¢ for each local call of 5 minutes' duration, plus 7¢ for each 5 minutes in excess of 5 minutes or fraction thereof on each local call, provided that for every increase or decrease in the charges made to Mateer Corporation for local calls by the Telephone Company which is at any time furnishing telephone service to Mateer Corporation, there shall be a like arithmetical increase or decrease in the amount to be paid to Mateer Corporation by Arlington Corporation for such local calls, provided further that fractions of a cent involved in any increase or decrease of charges by such Telephone Company to

Mateer Corporation for local calls shall not be taken into account in fixing charges to be made to Arlington Corporation for local calls.

In addition thereto, Arlington Corporation agrees to pay to Mateer Corporation a share of all expenses (except amounts paid by Mateer Corporation to the telephone company from which telephone service is procured) Actually incurred by Mateer Corporation with respect to all telephone service furnished by Mateer Corporation to the Consumer Corporations and others, including without limiting the generality of the foregoing language, expenditures for maintenance and repairs of a central switchboard and other telephone equipment, wages of employees engaged in telephone service, supplies, and all other expenditures incidental to such telephone service, based upon the proportion which the number of terminals in Arlington Building bears to the total number of terminals in the Arlington Building and in other hotels and buildings in which like telephone service is being rendered by Mateer Corporation at such time, and Arlington Corporation further agrees to pay to Mateer Corporation a sum equal to 15% of such share of the expenses of telephone service (exclusive of terminal charges and charges for local and long distance telephone calls and telegrams, payable by Arlington Corporation as provided in the within paragraph.

Ninth: It is understood and agreed that Mateer Corporation may furnish any service similar to those hereinabove described and provided to be furnished to Arlington Corporation and to the other Consumer Corporations, to other corporations, firms or individuals, and in any such event Arlington Corporation is to bear a share of the total expenses incurred by Mateer Corporation, based upon the proportions hereinabove indicated with respect to each such service.

Tenth: Arlington Corporation agrees to pay to Mateer Corporation the entire cost of maintenance and repairs of the tunnel constructed pursuant to a certain ordinance passed by the City Council of said City of Chicago, on November 8, 1923, (granting permission and authority to Lincoln Park Manor Building Corporation to construct, maintain and operate two tunnels, and a one story bridge or passage-way described in such ordinance), between the premises commonly known as Nos. 521-529 Arlington

Place, and the premises commonly known as Nos. 524-532 Arlington Place, and also agrees to pay to Mateer Corporation the full amount of the rent payable to said City of Chicago for the use of any street or streets in connection with said above described tunnel, in accordance with the terms of said ordinance, or any renewal or amendment thereof.

1584 Eleventh: It is further understood and agreed that the parties hereto will not make any amendments, to or changes in the within agreement unless such amendments have been duly approved by the Trustee under the First Mortgage Deed of Trust, dated February 9, 1924, and, executed by Granada Hotel Corporation to Chicago Trust Company as Trustee, to secure the payment of the Granada Six and One-half per cent Real Estate Gold Bonds in the principal amount of \$550,000.00. The provisions of this eleventh paragraph are expressly intended for the benefit of the holders of said bonds issued under said Trust Deed dated February 9, 1924.

It is further understood and agreed that neither said Trustee, or any of its agents or attorneys, shall be liable to the holders of said bonds or to anyone else for anything done or omitted to be done with respect to, or in pursuance of, the provisions of this eleventh paragraph.

Twelfth: All moneys agreed to be paid by Arlington Corporation to Mateer Corporation hereunder shall be payable monthly (i. e. on the basis of calendar months, or fractions thereof) within 5 days after statements are rendered by Mateer Corporation. Statements rendered by Mateer Corporation covering charges for services rendered in any calendar month shall be based upon expenses incurred during such calendar month.

Thirteenth: It is further agreed by the parties hereto that the agreements herein contained shall be binding upon, apply and inure to, their respective successors and assigns.

In Witness Whereof, the said Arlington Apartment Building Corporation, party of the first part, and the said Mateer Hotels, Inc., the party of the second part, have caused this instrument to be signed in their behalf, by their respective Presidents or Vice Presidents thereunto duly authorized, and have caused their respective corporate seals to be affixed, attested by their respective sec-

retaries or assistant secretaries, all on the day and year first above written.

Arlington Apartment Building
Corporation,
By Wm. J. Lloyd,
President.

Attest:

D. B. Hall,
Secretary.

Mateer Hotels, Inc.,
By Fred D. Mateer,
President.

Attest:

P. R. Widmer,
Secretary.

Executed in Duplicate.

1633-A CITY NATIONAL EXHIBIT A-3.

Inventory and Appraisal of Granada Hotel.
525 Arlington Place.
Chicago.

1633-C

Chicago, Ill.,

July 31, 1933.

Mr. Edward Hall,
The Granada Hotel,
525 Arlington Place,
Chicago, Illinois.

Dear Mr. Hall:

The following schedules consist of a complete inventory of all the furniture, carpets, rugs, draperies, lamps, bedding, china, silver, glass, kitchen utensils, Inador beds, built in kitchen cabinets, (wood and metal), built in China cabinets, at the building known as the Granada Hotel, 525 Arlington Place; Chicago.

You will note that the first 19 pages consist of a detailed inventory of every item in each individual apartment, with exception of the carpets. The balance of the building, such as all the public rooms, linen room, furniture store room, etc., are a part of the inventory but are all included in the appraisal. In this way, you have a complete inventory of every piece of furniture in every room in the house.

Due to the fact that parts of some apartments have one quality of carpet and the balance another quality, we have given you a condensed total yardage of each grade of each quality of carpet.

This appraisal is made on the following basis: Cost of replacing article of identical quality less the depreciation of the said article, or in other words, its value to the hotel based on today's market value new less depreciation.

For your information, our method of arriving at the value of the kitchen cabinet, (wood and metal), also the China cabinet, is as follows:

Wood cabinet new today installed \$95.00. Useful life of cabinet 25 years. In use 8 years, or a depreciation of 4.75 per year, making a total depreciatic of \$38.00; leaving a net value to the hotel of \$57.00.

This Appraisal Does Not take into consideration the necessity or lack of necessity of any article, nor does it include lighting fixtures or machinery of any kind.

When taking this appraisal, we had Mr. C. S. Parker, the manager, accompany us in every apartment on the first and second floors for the purpose of identifying any piece of furniture which might belong to the tenant of that apartment, and we had Mrs. A. F. Gahlan, the housekeeper of the Granada and Arlington Hotels, accompanying us to the third, fourth and fifth floors, linen rooms, all furniture store rooms, etc., to make identifications.

Due to any inaccuracies that is possible in taking an inventory of this size and due to the possibility of wrong identification of some items, such as odd pieces of furniture, china, glass, silverware, etc., we would suggest that an allowance be made, to be added or subtracted from the total amount of the value of this appraisal, of \$350.00.

The physical condition of the interior of this hotel, which includes corridors, typical apartments and public rooms is remarkably clean and well-kept; especially so, considering the reduced mail service.

Your attention is called to the fact that this appraisal, being based on today's market values, is subject to fluctuation, for the prices of all merchandise included in this appraisal is advancing very fast and if the market continues to advance in the next three months as it has advanced the last two months, the merchandise in this building will be worth considerably more than it is today. The 1633-D grand total value as appraised by us of all items included in the appraisal is \$42,955.50.

All detailed information on this appraisal is held in the files of the Chicago Seating Company.

Respectfully submitted,
Chicago Seating Company,
W. J. Murphy,
W. J. Murphy,
Gary Young,
Gary Young,

City Nat. Bank Exhibit A-3.

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1633-EE

Recapitulation

Page 1

	Total	Price	Total
Davenports A.....	32	30.00	960.00
Davenports B.....	24	25.00	600.00
Davenports C.....	34	15.00	510.00
Easy Chairs A.....	33	17.50	577.50
Easy Chairs B.....	23	12.00	276.00
Easy Chairs C.....	51	8.00	408.00
Coxwell Chairs A.....	29	17.00	493.00
Coxwell Chairs B.....	13	12.00	156.00
Coxwell Chairs C.....	7	8.00	56.00
Open Arm Chair A.....	32	9.00	288.00
Open Arm Chair B.....	27	6.00	162.00
Open Arm Chair C.....	41	2.50	102.50
Side Chairs C.....	370	1.75	647.50
Lamps—Floor.....	103	2.25	228.75
Lamps—Pridge.....	114	1.75	199.50
Desks—Drop Leaf.....	37	8.50	314.50
Desks—Secretary.....	60	10.00	600.00
Drawer Dining Table.....	38	7.50	285.00
Extension D. Table.....	40	11.00	440.00
End Table.....	146	.90	131.40
Octasional Table.....	23	4.00	92.00
Coffee Table.....	47	2.50	117.50
Smokers.....	93	.60	55.80
Pictures.....	127	.60	76.20
Tapestry.....	10	1.00	10.00
Lamps Table.....	14	2.80	39.20
Beds Wood 4' 6".....	11	16.00	176.00
Beds Metal 4' 6".....	1	15.00	15.00
Beds Wood 3' 3".....	32	16.00	512.00
Beds Metal 3' 3".....	6	15.00	90.00
White Inador Beds Complete 4' 6".....	83	26.00	2,158.00
White Inador Beds Complete 3' 3".....	27	26.00	702.00
Dressers Walnut.....	57	12.00	684.00
Dressers Maple.....	41	18.00	738.00
Chest of Drawers Walnut.....	14	7.00	98.00
Chest of Drawers Maple.....	43	10.00	430.00
Dressing Table Maple.....	25	10.00	250.00
Nite Table.....	2	1.00	2.00
Maple Bench.....	21	2.00	42.00
Kitchen Cabinet Wood.....	52	57.00	2,964.00
Kitchen Cabinet Metal.....	43	51.00	2,193.00
China Service for 6.....	49	3.00	147.00
China Service for 4.....	36	2.25	81.00
Silver Service for 6.....	39	1.15	44.85
Silver Service for 4.....	23	.90	20.70
Glasses Service for 6.....	29	.45	13.05
Glasses Service for 4.....	20	.35	7.00
Kitchen Utensils.....	60	1.80	108.00
Waste Baskets.....	145	.10	14.50
Carpet Sweepers.....	53	1.00	53.00
419 yds Carpet 3/4 Axm. A.....	419 yds	1.50	628.50
3/4 Carpet Axm. B.....	1916	1.00	1,916.00
3/4 Carpet Axm. C.....	1750	.40	700.00
3/4 Carpet Wilton Vel A.....	729	2.00	1,458.00
3/4 Carpet Wilton Vel B.....	741	1.40	1,037.40
3/4 Carpet Wilton Vel C.....	270	.45	121.50
5' 6" Corr. Carpet.....	503	1.80	905.40
Print Linoleum A.....	43 sq. yd.	.60	25.80
Print Linoleum B.....	11 sq. yd.	.35	3.85
Print Linoleum C.....		No Value	
Inlay Linoleum A.....	132 sq. yd.	.80	105.60
Inlay Linoleum B.....	35 sq. yd.	.45	15.75

25,899.75

1633-FF

Recapitulation

Page 2

	Total	Price	Total
Kitchen Stools.....	35	.25	8.75
Curtains Pr.....	414	.75	310.50
Draperies Pr. with Cornice.....	144	2.35	338.40
French Door Curtains Pr.....	57	.75	42.75
Stoves Large.....	50	14.50	725.00
Stoves Small.....	42	12.00	504.00
China Cabinets.....	62	6.00	372.00
Ironing Boards.....	60	.50	30.00
Wall Hangings.....	2	3.00	6.00
W. I. Console & Mirror.....	15 1/2	6.00	93.00
Pillows Pr.....	143	1.50	214.50
Small Table.....	1	2.00	2.00
Telephone Stand Wood.....	14	2.50	35.00
Metal Cabinet.....	1	3.00	3.00
Wall Lamp & Shade.....	10	2.50	25.00
Uphol. Stool C.....	28	.40	11.20
Fibre Table.....	5	2.50	12.50
Fibre Settee.....	1	7.50	7.50
Fibre-Chairs.....	4	4.00	16.00
Fibre Rocker.....	2	4.00	8.00
Fibre Desk.....	1	3.50	3.50
Fibre Desk Chair.....	1	2.00	2.00
Mirror Typical.....	20	1.00	20.00
Fibre Chaise Lounge.....	1	7.00	7.00
Chiffrobe.....	4	6.00	24.00
Wardrobe Birch Large.....	30	5.00	150.00
Wardrobe Birch Small.....	42	4.00	168.00
Wardrobe Walnut.....	2	10.00	20.00
Card Tables.....	22	.75	16.50
Folding Chair—Wood.....	7	1.50	10.50
Folding Chair—Metal.....	4	2.25	9.00
Day Bed & Pad—Wood.....	2	8.00	16.00
China Server—Walnut.....	14	14.00	196.00
Spec. Smokers.....	2	4.00	8.00
F. L. Base Only.....	1	.50	.50
Br. Base Only.....	1	.50	.50
Server Walnut.....	10	8.00	80.00
Large Cabinet Walnut.....	7	4.50	31.50
Telephone Stand & Chair—Metal.....	4	4.00	16.00
Maple Bench.....	5	2.00	10.00
D. L. Table.....	3	5.00	15.00
Bed Davenport C.....	1	9.00	9.00
G. L. Table.....	9	5.00	45.00
Spec. Spring & Mattress & Base.....	2	9.50	19.00
Spinnet Desk.....	1	4.00	4.00
Desk F. T. Small.....	2	3.00	6.00
Spec. Davenport A.....	1	35.00	35.00
Spec. E. Chair A.....	1	18.00	18.00
Occ. Table.....	1	9.00	9.00
Sofa Table.....	3	12.00	36.00
Seat Pads 8'.....	8	14.00	112.00
Drum Table.....	1	10.00	10.00
Slip Cover—Sofa.....	1	6.00	6.00
Slip Cover—Easy Chair.....	1	3.00	3.00
Slip Cover—Pads.....	2	4.00	8.00
Spec. Drap. Pr.....	2	20.00	40.00
Spec. Drap. Pr.....	1	12.00	12.00

29,840.85

1633-GG

Recapitulation

Page 3

	Total	Price	Total
Spec. Draperies.....	3	15.00	45.00
Spec. Stove 4 burner.....	1	18.00	18.00
Kitchen Table.....	2	4.00	8.00
Ironing Board Cabinet.....	4	3.00	12.00
Serving Cabinet.....	3	4.00	12.00
Rug 3 x 5.....	1	3.00	3.00
Small Cabinet Walnut.....	2	5.00	10.00
White Bed only 3/3.....	1	16.00	16.00
Oak Chest.....	3	3.00	9.00
Mah. Rocker.....	1	4.50	4.50
D. R. Table.....	2	14.00	28.00
Chinese Rug 4.6 x 7.6.....	1	35.00	35.00
Vanity Enamel.....	2	8.00	16.00
Tilt Top Table.....	2	1.00	2.00
Mirror 24 x 6 ft.....	3	10.00	30.00
Rug 27 x 54.....	1	2.00	2.00
Spec. Secretary.....	3	25.00	75.00
Oil Painting.....	1	25.00	25.00
Oval Maple Tables.....	1	2.50	2.50
Windsor Rocker.....	1	4.50	4.50
Special Draperies.....	6	10.00	60.00
Table Scarf.....	1	1.00	1.00
Portiers Pr.....	1	15.00	15.00
Grand Piano.....	1	175.00	175.00
Screen.....	1	3.00	3.00
Special Cabinet.....	1	24.00	24.00
Simons Metal Desk.....	1	8.50	8.50
Love Seat.....	1	25.00	25.00
D. L. Deck.....	1	20.00	20.00
Bed Enamel 4/6 Cpt.....	1	14.00	14.00
Bed Walnut 4/6.....	1	16.00	16.00
Dresser Walnut.....	1	26.00	26.00
Chest Walnut.....	1	16.00	16.00

\$ 30,601.85

Linens.....	1,992.22
Lobby.....	2,072.95
Ladies' Room.....	352.50
Corridor.....	23.00
Mens' Smoking Room.....	292.50
Sun Parlor North.....	165.95
Sun Parlor South.....	177.25
Entrance.....	121.00
Foyer.....	381.00
Ball Room.....	4,938.45
Kitchen Off Ball Room.....	203.00
Vault Room.....	7.00
Mr. Parkers' Office.....	304.70
Auditor's Office.....	165.35
Front Lobby Office.....	107.50

1933-HH

Page 4

Recapitulation

Front Desk.....	82.50
Terrace & Garden.....	114.00
Elevator Foyer—1st Floor.....	52.00
Second Floor Foyer.....	16.00
Third Floor Foyer.....	15.00
Fourth Floor Foyer.....	20.00
Fifth Floor Foyer.....	16.00
Furniture Store Room #1.....	361.43
Furniture Store Room #2.....	104.80
Basement Store Room.....	10.00
Maids' Room.....	27.75
Linen Room.....	229.80
	<u>42,955.50</u>

1903-11

CITY NATIONAL EXHIBIT 2
GRANADA APARTMENT HOTEL

Charges and Credits to Lincoln Park Manor in Respect to
Heat, Refrigeration and Water
Years 1930 to 1936, inclusive

	Charges				Credits	
	Heat and Refrig.	Water	Elevator	Total	Cash	Other
1930.....	7,291.67	360.		7,651.67	6,610.11	1,041.56 [Ⓐ]
1931.....	6,458.35	360.		6,818.35	6,610.02	208.33 [Ⓑ]
1932.....	6,250.02	360.		6,610.02	6,610.02	
1933.....	6,250.02	360.		6,610.02	6,610.02	
1934.....	6,250.02	360.		6,610.02	6,610.02	
1935.....	6,250.02	360.		6,610.02	6,610.02	
1936.....	6,250.02	360.		6,610.02	6,610.02	
	<u>45,000.12</u>	<u>2,520.00</u>		<u>47,520.12</u>	<u>46,270.23</u>	<u>1,249.89</u>

[Ⓐ]Adjustment for April to August, inclusive, from \$625. to \$416.67

[Ⓑ]208.33 x 5—1,041.65.

1905-12

GRANADA APARTMENT HOTEL

LINCOLN PARK MANOR

		Heat and Re- frigeration	Water	Total		
Jany.	'30.....	625.	30.	655.	655.	
Febry.	".....	625.	30.	655.	655.	
Mar.	".....	625.	30.	655.	655.	
Apl.	".....	625.	30.	655.	655.	
May	".....	625.	30.	655.	655.	
June	".....	625.	30.	655.	655.	
July	".....	625.	30.	655.		
Aug.	".....	625.	30.	655.	268.44	1,041.56
Sept.	".....	416.67	30.	446.67	446.67	
Oct.	".....	625.	30.	655.	655.	
Nov.	".....	625.	30.	655.	655.	
Dec.	".....	625.	30.	655.	655.	
		7,291.67	360.	7,651.67	6,610.11	1,041.56
Jany.	'31.....	625.	30.	655.	655.	
Febry.	".....	625.	30.	655.	655.	
Mar.	".....	625.	30.	655.	655.	
Apl.	".....	625.	30.	655.	446.67	208.33
May	".....	416.67	30.	446.67	446.67	
June	".....	416.67	30.	446.67	446.67	
July	".....	416.67	30.	446.67	446.67	
Aug.	".....	416.67	30.	446.67	446.67	
Sept.	".....	416.67	30.	446.67	446.67	
Oct.	".....	625.	30.	655.	655.	
Nov.	".....	625.	30.	655.	655.	
Dec.	".....	625.	30.	655.	655.	
		6,458.35	360.	6,818.35	6,610.02	208.33
Jany.	'32.....	625.	30.	655.	655.	
Febry.	".....	625.	30.	655.	655.	
Mar.	".....	625.	30.	655.	655.	
Apl.	".....	416.67	30.	446.67	446.67	
May	".....	416.67	30.	446.67	446.67	
June	".....	416.67	30.	446.67	446.67	
July	".....	416.67	30.	446.67	446.67	
Aug.	".....	416.67	30.	446.67	446.67	
Sept.	".....	416.67	30.	446.67	446.67	
Oct.	".....	625.	30.	655.	655.	
Nov.	".....	625.	30.	655.	655.	
Dec.	".....	625.	30.	655.	655.	
		6,250.02	360.	6,610.02	6,610.02	

1905-13

**GRANADA APARTMENT HOTEL
LINCOLN PARK MANOR**

		Heat and Re- frigeration	Water	Total	
Jany.	'33	625.	30.	655.	655.
Febry.	"	625.	30.	655.	655.
Mar.	"	625.	30.	655.	655.
Apl.	"	416.67	30.	446.67	446.67
May	"	416.67	30.	446.67	446.67
June	"	416.67	30.	446.67	446.67
July	"	416.67	30.	446.67	446.67
Aug.	"	416.67	30.	446.67	446.67
Sept.	"	416.67	30.	446.67	446.67
Oct.	"	625.	30.	655.	655.
Nov.	"	625.	30.	655.	655.
Dec.	"	625.	30.	655.	655.
		6,250.02	360.	6,610.02	6,610.02
Jany.	'34				
Febry.	"				
Mar.	"				
Apl.	"				
May	"				
June	"				
July	"				
Aug.	"				
Sept.	"				
Oct.	"				
Nov.	"				
Dec.	"				
		6,250.02	360.	6,610.02	6,610.02
Jany.	'35				
Febry.	"				
Mar.	"				
Apl.	"				
May	"				
June	"				
July	"				
Aug.	"				
Sept.	"				
Oct.	"				
Nov.	"				
Dec.	"				
		6,250.02	360.	6,610.02	6,610.02

Also 1936.

1905-14
CITY NATIONAL EXHIBIT 3
GRANADA APARTMENT HOTEL

Charges and Credits to Arlington in respect to Heat, Refrigeration and Water
Years 1930 to 1936 inclusive

	Charges			Credits		
	Heat and Refrig.	Water	Elevator	Total	Cash Other	
1930.....	\$10,800.00	\$ 480.00	\$ 900.00	\$12,180.00	\$12,180.00	
1931.....	10,800.00	480.00	900.00	12,180.00	12,180.00	
1932.....	10,800.00	480.00	900.00	12,180.00	12,180.00	
1933.....	10,800.00	480.00	900.00	12,180.00	8,100.00	4,080.00①
1934.....	6,840.00	360.00	—	7,200.00	7,200.00	
1935.....	6,840.00	360.00	—	7,200.00	7,200.00	
1936.....	6,840.00	360.00	—	7,200.00	7,200.00	
	\$63,720.00	\$ 3,000.00	\$ 3,600.00	\$70,320.00	\$66,240.00	4,080.00

① Represents credit made December 1933 retroactive for the twelve months of 1933 as below.

	Previous	Subsequent	Credit		
Heat and Refrig.	\$ 900.00	\$ 570.00	\$ 330.	x	12—\$ 3,960.00
Water...	40.00	30.00	10.	x	12 120.00
					<u>\$ 4,080.00</u>

1905-15

GRANADA APARTMENT HOTEL

HEAT, LIGHT AND POWER

		Heat and Refrig- eration	Water	Elevator		Cash
Jany.	'30	900.00	40.00	75.00	1,015.	1,015.
Febry.	"	900.00	40.00	75.00	1,015.	1,015.
Mar.	"	900.00	40.00	75.00	1,015.	1,015.
Apl.	"	900.00	40.00	75.00	1,015.	1,015.
May	"	900.00	40.00	75.00	1,015.	1,015.
June	"	900.00	40.00	75.00	1,015.	1,015.
July	"	900.00	40.00	75.00	1,015.	1,015.
Aug.	"	900.00	40.00	75.00	1,015.	1,015.
Sept.	"	900.00	40.00	75.00	1,015.	1,015.
Oct.	"	900.00	40.00	75.00	1,015.	1,015.
Nov.	"	900.00	40.00	75.00	1,015.	1,015.
Dec.	"	900.00	40.00	75.00	1,015.	1,015.
		10,800.00	480.00	900.00	12,180.	12,180.
Jany.	'31	900.00	40.00	75.00	1,015.	1,015.
Febry.	"	900.00	40.00	75.00	1,015.	1,015.
Mar.	"	900.00	40.00	75.00	1,015.	1,015.
Apl.	"	900.00	40.00	75.00	1,015.	1,015.
May	"	900.00	40.00	75.00	1,015.	1,015.
June	"	900.00	40.00	75.00	1,015.	1,015.
July	"	900.00	40.00	75.00	1,015.	1,015.
Aug.	"	900.00	40.00	75.00	1,015.	1,015.
Sept.	"	900.00	40.00	75.00	1,015.	1,015.
Oct.	"	900.00	40.00	75.00	1,015.	1,015.
Nov.	"	200.00	40.00	75.00	1,015.	1,015.
Dec.	"	900.00	40.00	75.00	1,015.	1,015.
		10,800.00	480.00	900.00	12,180.	12,180.
Jany.	'32	900.00	40.00	75.00	1,015.	1,015.
Febry.	"	900.00	40.00	75.00	1,015.	1,015.
Mar.	"	900.00	40.00	75.00	1,015.	1,015.
Apl.	"	900.00	40.00	75.00	1,015.	1,015.
May	"	900.00	40.00	75.00	1,015.	1,015.
June	"	900.00	40.00	75.00	1,015.	1,015.
July	"	900.00	40.00	75.00	1,015.	1,015.
Aug.	"	900.00	40.00	75.00	1,015.	1,015.
Sept.	"	900.00	40.00	75.00	1,015.	1,015.
Oct.	"	900.00	40.00	75.00	1,015.	1,015.
Nov.	"	900.00	40.00	75.00	1,015.	1,015.
Dec.	"	900.00	40.00	75.00	1,015.	1,015.
		10,800.00	480.00	900.00	12,180.	12,180.

1905-16

GRANADA APARTMENT HOTEL

	Heat and Refrig- eration	Water	Elevator	Total	Cash
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Forward

	330.	10.		340.	
Jan. '33	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
Feb. "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
Mar. "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
Apr. "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
May "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
June "	900.00	40.00	75.00	1,015.	1,015.
	330.	10.		340.	
July "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Aug. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Sept. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Oct. "	900.00	40.00	75.00	1,015.	
	330.	10.		340.	
Nov. "	900.00	40.00	75.00	1,015.	
	330.	10.00		340.	
Dec. "	900.00	40.00	75.00	1,015.	2,010.00
	10,800.00	480.00	900.00	12,180.	8,100.
Jan. '34	570.00	30.00		600.	
Feb. "	570.00	30.		600.	
Mar. "	570.00	30.		600.	
Apr. "	570.	30.		600.	
May "	570.	30.		600.	
June "	570.	30.		600.	3,600.
July "	570.	30.		600.	600.
Aug. "	570.	30.		600.	600.
Sept. "	570.	30.		600.	600.
Oct. "	570.	30.		600.	600.
Nov. "	570.	30.		600.	600.
Dec. "	570.	30.		600.	600.
	6,840.	360.		7,200.	7,200.
Jan. '35	570.	30.		600.	600.00
Feb. "	570.	30.		600.	600.00
Mar. "	570.	30.		600.	600.00
Apr. "	570.	30.		600.	600.00
May "	570.	30.		600.	600.00
June "	570.	30.		600.	600.00
July "	570.	30.		600.	600.00
Aug. "	570.	30.		600.	600.00
Sept. "	570.	30.		600.	600.00
Oct. "	570.	30.		600.	600.00
Nov. "	570.	30.		600.	600.00
Dec. "	570.	30.		600.	600.00
	6,840.	360.		7,200.	7,200.

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City Nat. Bank Exhibits.

1905-17

GRANADA APARTMENT HOTEL

	Heat and Refrig- eration	Water	Elevator	Total	Cash
Forward					
Jany. '36	570.	30.		600.	600.00
Febry. "	570.	30.		600.	600.00
Mar. "	570.	30.		600.	600.00
Aprl. "	570.	30.		600.	600.00
May. "	570.	30.		600.	600.00
June "	570.	30.		600.	600.00
July "	570.	30.		600.	600.00
Aug. "	570.	30.		600.	600.00
Sept. "	570.	30.		600.	600.00
Oct. "	570.	30.		600.	600.00
Nov. "	570.	30.		600.	600.00
Dec. "	570.	30.		600.	600.00
	6,840.	360.		7,200.	7,200.

1905-18

CITY NATIONAL EXHIBIT 4

GRANADA APARTMENT HOTEL

	Heat and Refrigeration	Water	Total
Arlington Apartment Hotel.....	59,760.00	2,880.00	62,640.00
Lincoln Park Manor.....	43,750.23	2,520.00	46,270.23
	103,510.23	5,400.00	108,910.23
Reconciliation:			
Total Cash Receipts			
Arlington.....	66,240.00		
Lincoln Pk.....	46,270.23	12,510.23	
Less—Elevator—Arlington.....		3,600.00	108,910.23

1905-19

EXHIBIT 5

Excerpts from City National

Granada Apartments, Inc., Special Report, December 31, 1929

Prepared by
HOTEL AUDIT BUREAU
Chicago, Illinois

1905-31

Granada Apartments, Inc., Heat, Light and Power Expense
Year Ended December 31, 1929

	Amount
Wages.....	\$ 4 630 00
Coal.....	969 40
Fuel Oil.....	8 300 02
Gas.....	925 25
Electric Light and Power.....	7 010 90
Water.....	2 061 93
Hauling Ashes.....	128 81
Total.....	24 026 31
Less: Sales.....	15 315 53
Total Heat, Light and Power Expense (Carried to Exhibit "A")	<u>\$ 8 710 78</u>

Note: See the comments which are a part of this report.

Schedule A-3

2110-18

EXHIBIT 6

Excerpt from City National

The Granada, Heat, Light, Power and Refrigeration
Month of December, 1930 and Year Ended December 31, 1930

	December 1930	Year 1930
Payroll.....	\$ 193 00	\$ 3 558 77
Fuel Oil.....	1 226 25	8 345 75
Gas.....	83 36	820 20
Electric Light and Power.....	613 11	7 097 36
Water.....	28 29	1 766 64
Refrigeration Supplies and Repairs.....	9 90	756 84
Water Meters.....		51 00
Miscellaneous Supplies and Expense.....	37 00	206 72
Total Heat, Light, Power and Refrigeration Expense..	2 190 91	22 603 28
Less: Heat, Water and Refrigeration Sold.....	1 595 00	17 890 02
Net Cost Heat, Light, Power and Refrigeration (Carried to Exhibit "B").....	<u>\$ 595 91</u>	<u>\$ 4 713 26</u>

Schedule B-4

2111-6

EXHIBIT 7

Schedule I

The Gradada Apartment Hotel Operating Expenses

Month and Year Ended December 31, 1931, as Prepared from the Books

Particulars	December	Year
General and Administrative		
Payroll.....	\$ 185.26	\$ 3,191.70
Bonus to Manager.....	—	400.00
Advertising.....	.85	108.50
Legal and Auditing.....	663.17	2,308.35
Insurance.....	124.55	1,471.41
Provision for Bad Debts.....	100.00	1,200.00
Office Stationery and Supplies.....	22.19	237.79
Additional Provision for Bad Debts.....	6,612.07	6,612.07
Postage.....	3.53	63.52
State Franchise Tax.....	—	52.50
Miscellaneous.....	38.10	656.54
Total.....	\$ 7,798.02	\$ 16,302.38
Rooms		
Payroll.....	\$ 1,426.91	\$ 17,813.34
Laundry.....	219.67	2,374.41
Gas.....	69.02	713.02
Provision for Replacement of Operating Equipment.....	100.00	1,200.00
Stationery.....	—	120.93
Housekeepers Supplies.....	81.45	680.61
Miscellaneous.....	24.15	205.09
Total.....	\$ 1,921.20	\$ 23,107.40
Heat, Light, Power and Refrigeration		
Payroll.....	\$ 427.51	\$ 3,723.95
Fuel Oil.....	769.63	6,876.83
Light and Power.....	621.61	7,022.72
Water.....	203.49	2,158.92
Miscellaneous.....	—	406.30
Total.....	\$ 2,022.24	\$ 20,188.72
Less Sales.....	1,595.00	17,890.02
Net Expense.....	\$ 427.24	\$ 2,298.70
Repairs and Maintenance		
Payroll.....	\$ 192.50	\$ 2,960.76
Boiler Repairs.....	17.00	534.60
Plumbing.....	12.46	443.37
Building.....	28.09	573.26
Paints and Supplies.....	29.98	790.05
Electric Bulbs.....	4.00	404.88
Furniture.....	27.27	532.25
Miscellaneous.....	24.72	934.95
Total.....	\$ 328.02	\$ 7,173.62

CITY NATIONAL EXHIBIT 8

GRANADA APARTMENT HOTEL
Heat, Light and Power

Expenses	Five mos. to 12/31	Years			
	1932	1933	1934	1935	1936
Wages.....	1,025.00	2,458.11	2,432.70	2,460.00	2,460.00
Fuel Oil.....	3,136.26	6,892.86	7,313.41	7,510.83	7,759.19
Electricity.....	2,891.92	7,066.96	7,410.60	7,278.62	7,356.82
Water.....	1,598.34	1,949.22	2,248.47	1,997.31	2,057.44
Charged other Hotels.....	8,651.52	18,567.15	19,405.18	19,246.76	19,633.45
Cost to Granada—exclusive of Deprecia- tion and Interest on Invest.....	7,208.34	13,810.02	13,810.02	13,810.02	13,810.02
Interest on \$44,000 @ 5%.....	1,443.18	4,557.13	5,505.16	5,436.74	5,823.43
Deprec. on 44,000 @ 5%.....	1,838.00	4,400.00	4,400.00	4,400.00	4,400.00
	3,276.18	8,957.13	9,595.16	9,836.74	10,223.43
16,280 Refrig.					
19,000 Heat					
9,000 Pumper					
44,280					

2116

GRANADA APARTMENT HOTEL

Income	Years				
	1932	1933	1934	1935	1936
Rentals:.....	\$28,057.41	\$73,499.36	\$67,406.91	\$64,664.79	\$69,707.09
Less: Rebates and Allowances.....		4,332.14	2,142.00	1,691.36	1,400.38
	28,057.41	69,167.22	65,264.95	62,973.43	68,306.91
Laundry —Net.....	39.38	142.14	131.06	170.73	124.90
Valet —Net.....	119.10	276.36	233.80	194.16	199.96
Cigars, Cigarettes, etc.—Net.....	20.43	186.63	61.77*	46.70	65.12
Miscellaneous.....	13.77	61.10	137.99	103.13	361.76
	28,250.09	69,833.45	65,705.99	63,488.15	69,068.45
Hotels and Others:					
Heat and Refrigeration.....	7,208.34	12,970.02	13,090.02	13,090.02	13,090.02
Water.....	350.00	840.00	720.00	720.00	720.00
Topics.....	61.79	4.57*	58.74	10.44*	23.01*
	7,620.13	13,805.45	13,868.76	13,799.48	13,787.01
Total Income—Forward.....	35,870.22	83,638.90	79,574.75	77,287.73	82,855.46
Expenses					
Operating:					
Rooms—					
Wages.....	4,461.59	14,311.76	17,392.06	16,206.66	15,837.34
Laundry.....	997.15	2,315.94	2,518.34	2,734.97	2,899.69
Cleaning Supplies.....	256.99	637.41	847.09	847.59	858.55
Gas.....	303.80	799.86	823.65	665.85	766.51
Linen replacements.....	227.30				
Equipment replacements.....	105.45				
Cleaning rugs, drapes, etc.....	7.65	10.25	57.24	22.88	62.45
Garbage removal.....	50.00	120.00	120.00	120.00	120.00
Miscellaneous.....		679.98	866.19	341.59	461.15
	6,409.93	18,875.20	22,624.57	20,939.54	21,005.80
Heat, Light and Power					
Wages.....	1,025.00	2,458.11	2,432.70	2,460.00	2,460.00
Electricity.....	3,136.26	6,892.86	7,313.41	7,510.83	7,759.19
Fuel Oil.....	2,891.92	7,066.96	7,410.60	7,278.62	7,356.83
Water.....	1,598.34	1,949.22	2,248.47	1,997.31	2,067.44
	8,651.52	18,367.15	19,405.18	19,246.76	19,633.45
Forward.....	15,061.45	37,242.35	42,029.75	40,186.30	40,639.14

*Denotes red figures

2118-2119-2120

	35,870.22	83,638.90	79,574.75	77,287.73	82,845.46
	15,061.45	37,242.35	42,029.75	40,186.30	40,639.14
Repairs and Maintenance					
Repairs.....	963.58				
Building.....	11.22				
Painting and Decorating.....	222.38	2,303.87	3,468.70	2,054.41	3,104.35
Furniture and fixtures.....	31.82	2,450.91	3,990.01	5,798.34	9,543.77
Mechanical and Electrical.....	72.74	2,563.93	3,042.03	1,725.53	2,030.94
Elevators.....	15.15			276.15	98.00
Light bulbs.....	193.46	291.10	358.15	264.09	264.40
Lighting.....	69.02				
Engine room					
Boiler.....	13.32				
Engine.....	3.50	519.02	878.62	1,091.27	212.00
Refrigerator.....	277.74				
	1,873.93	8,128.83	1,736.91	12,109.79	15,253.46
General and Administrative					
Salaries.....	1,732.50				
Agents' Compensation.....	1,075.01				
Telephone.....	1,387.84	3,293.67	2,878.44		
Telephone—charged to guests.....	1,169.34*	3,057.13*	2,337.85*	653.05	546.98*
Legal and Auditing.....	400.40	1,863.54	981.70	1,078.89	780.00
Entertaining.....	290.01				
Advertising.....	56.00	23.62	23.50	582.92	785.81
Printing and Stationery, etc.....	15.93	77.75	420.08	236.75	238.83
Exchange and on cheques.....	29.44				
Postage.....	6.80				
Miscellaneous.....	15.72				
Provision for Bad Debts.....	750.00	1,800.00	1,800.00	889.31	242.12
					1,223.72
Insurance.....		1,378.81	1,488.67	1,335.30	231.07
Management Fee.....		700.00	2,984.12	3,323.59	3,535.17
	4,590.30	6,080.26	8,239.66	8,099.81	7,583.70
Depository Robbery	166.02				
	4,756.32	6,080.26	8,239.66	8,099.81	7,583.70
Total Expenses	21,691.70	51,451.44	62,006.32	60,395.90	63,476.30
Income—before Invest, Insee, Taxes, Depreciation and Amortization	14,178.52	32,187.46	17,568.43	16,891.83	19,369.16

Entered
Oct. 14,
1937.

239 And afterwards, to wit, on the 14th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

240 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—65811) • •

Thursday, October 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

It Is Ordered by the Court that this cause be and the same is hereby referred to Carl R. Chindblom Special Master to receive the evidence of any applicant for fees. Said Special Master to reduce said evidence to writing and report the same to this Court and this cause is continued to October 21 A. D. 1937 for hearing on Petitions for fees and entry of Final Decrees. On motion of Weightstill Woods Trustee It is ordered that leave be and the same is hereby given him to file petition for fees within 5 days from this date.

241 And on, to wit, the 21st day of October, 1937, came Carl R. Chindblom, Referee, etc., and filed in the Clerk's office of said Court his certain Report in words and figures following to wit:

242 IN THE DISTRICT COURT OF THE UNITED STATES.
• • • (Caption—65811) • • •

Filed
Oct. 21,
1937.

**REPORT OF CARL R. CHINDBLOM, REFEREE IN
BANKRUPTCY, AS SPECIAL MASTER, ON TAK-
ING OF EVIDENCE ON APPLICATIONS FOR FEES
AND EXPENSES.**

To the Honorable John P. Barnes, Judge of the District
Court of the United States, for the Northern District of
Illinois, Eastern Division, in Bankruptcy Sitting:

Honorable Sir:

In the above matter, your Honor, on October 14, 1937,
referred to me, as Special Master, the applications for
fees, for hearing and reporting to your Honor such evi-
dence as would be presented before me by the various ap-
plicants. Inasmuch as one of said applicants had come
from Danville, Illinois, I set the matter for immediate
hearing at 1 o'clock P. M., on said date of October 14, 1937.
Thereafter, the hearing was continued and evidence taken
on October 16, 1937, October 18, 1937, October 19, 1937 and
October 20, 1937.

243 In compliance with your Honor's order, I hereby
Report that I caused the evidence submitted to be re-
duced to writing and transmit the same herewith in a
Transcript covering 244 pages. I personally took such
part in the examination of the witnesses as I thought nec-
essary and helpful to ascertain essential facts for the in-
formation of your Honor.

Witnesses Heard.

For the convenience of your Honor, I Further Report
that testimony was taken on behalf of the following appli-
cants for fees and expenses, as hereinafter shown, viz.:

Fred C. Meyers:

This applicant testified (Transcript, pages 3 to 35) in
his own behalf, as Temporary Trustee, and requested the
allowance of a fee of \$5,000.00 and reimbursement of
\$750.00 for expenses.

Weightstill Woods:

Was called as a witness on behalf of Mr. Myers and tes-
tified as shown on pages 35 to 43 of the Transcript.

Samuel Micon:

This applicant testified (Transcript, pages 43 to 72) in his own behalf as attorney for Edwin Rosenberg, a creditor, and requested the allowance of a fee of \$2,500.00 for services in a proceeding in the Circuit Court of Cook County, Illinois, case No. 37 C 3704, entitled "Edwin Rosenberg vs. Granada Apartments, Inc.," and also requested the allowance of a fee of \$500.00 for services in the present proceeding, and reimbursement of \$25.00 for expenses.

David H. Greenberg:

This applicant testified (Transcript, pages 73 to 81) in his own behalf as attorney for petitioning creditors and requested the allowance of a fee of \$4,500.00, and reimbursement of \$135.00 for costs, for himself and his partners, Jay R. Lasky and Gilbert F. Wagner.

Mr. Jay R. Lasky:

Also testified as shown on pages 82 to 87 of the Transcript.

David H. Kraft:

This applicant testified (Transcript, pages 94 to 113) in his own behalf as attorney for Maurice M. Kraft, holder of a \$500.00 first mortgage bond; and requested the allowance of a fee of \$100.00 for services in this proceeding.

Mort. D. and Frank Goldberg:

Morton D. Goldberg testified (Transcript, pages 117 to 126) on behalf of these claimants that he is a member of the law firm of Morton D. Goldberg and Frank Goldberg, attorneys for the Debtor corporation, and requested an allowance of \$6,500.00 for fees and reimbursements of \$174.55 for costs and expenses.

Bondholders Protective Committee.

Vincent O'Brien, Esq., of the law firm of Defrees, Buckingham, Jones & Hoffman, stated (Transcript, page 115) that the Bondholders Protective Committee would not offer any proof, but "stands on its reputation" and "adopt as supplementary proof of their services the testimony of Arnold Johnson, the secretary of the Committee," heretofore offered before Judge Barnes.

In its petition, said Committee, consisting of Charles S.

Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, requested the allowance of "such amounts as may be found reasonable for the payment of expenses incurred by petitioners to City National Bank and Trust Company of Chicago for services rendered and personnel and facilities furnished to the Committee, for services rendered as Depositary and for the reimbursement of "out of pocket expenses" of said petitioners in the amount of \$2,285.21.

C. F. Boerger:

Testified (Transcript, pages 126 to 149), on behalf of the Bondholders Protective Committee, as to the allowance asked for City National Bank and Trust Company of Chicago as Depositary and requested the allowance of a fee for said Depositary in the amount of \$3,200.00.

William G. Sturm:

Testified (Transcript, pages 158 to 174), on behalf of the Bondholders' Protective Committee, and requested allowances of \$10,000.00 for expenses incurred by said Committee to the City National Bank and Trust Company for "services, personnel and facilities" employed and utilized by the Committee, and \$2,285.21 for reimbursement for "out of pocket expenses."

Vincent O'Brien, Esq.:

Testified (Transcript, pages 175 to 214) for the-law firm of Defrees, Buckingham, Jones & Hoffman, attorneys for City National Bank and Trust Company of Chicago as Trustee under the first mortgage indenture and for the First Mortgage Bondholders Committee, and requested the allowance of a total fee of \$30,000.00 with a credit or deduction of \$5,500.00 for payments heretofore made, making a net amount of \$24,500.00.

Compensation of Special Master.

As above stated, I attended all of the hearings in this matter and participated in the examination of witnesses. I have devoted ten hours to such hearings and to the preparation of this Report. I hereby certify that, in my opinion, a reasonable and customary fee for my services in said matter is the sum of \$125.00. I further certify that, in my opinion, a reasonable and proportionate charge for the use of my office and for clerical and stenographic services is the sum of \$25.00. I therefore respectfully request

that a total compensation of \$150.00 be allowed me, of which \$125.00 are for services and \$25.00 for expenses.

On July 8, 1937, I filed a Report on the filing of claims and objections thereto and on acceptances of the Plan of Reorganization. In that Report I requested compensation in the amount of \$85.00, of which \$60.00 were for services and \$25.00 for expenses. This amount has not been paid. I, therefore, respectfully request that your Honor enter an order allowing me total compensation in the amount of \$235.00, of which \$185.00 are for services and \$50.00 are for expenses.

Fees of Court Reporter.

Mr. William J. Snyder took and transcribed the testimony in this matter and has rendered a bill for \$150.25 which I find to be reasonable and recommend for allowance and payment.

Documents Transmitted.

All of the petitions for fees and expenses are transmitted herewith together with the Transcript of Testimony and the bill of the Court Reporter.

Mailing of Copies of This Report.

Copies of this Report have been mailed to the following: Messrs. Mort D. and Frank Goldberg, Attorneys for Debtor, 11 South La Salle St., Chicago, Ill.

Frank McAllister, Esq., Attorney for Temporary Trustee, 1 North La Salle St., Chicago, Ill.

Samuel Micon, Esq., Attorney for Edwin Rosenberg, a creditor, 134 North La Salle St., Chicago, Illinois.

Messrs. Wagner, Lasky & Greenberg, Attorneys for Petitioning Creditors, 134 North La Salle St., Chicago, Ill.

Messrs. Defrees, Buckingham, Jones & Hoffman, Attorneys for Bondholders Committee, 105 So. La Salle St., Chicago, Ill.

248 Maurice M. Kraft, Esq., Attorney for holder of certain bond, 7 South Dearborn St., Chicago, Ill.

Respectfully submitted,

Carl R. Chindblom,

Carl R. Chindblom,

Referee in Bankruptcy, as Special Master.

Dated: Chicago, Illinois,
October 21, 1937.

249 And on, to wit, the 13th day of October, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Petition in words and figures following, to wit:

Filed
Oct. 13,
1937.

250 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) * *

PETITION.

Now comes the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933 with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor (the present members thereof being Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer) and respectfully represents unto the Court as follows:

1. That the Plan of Reorganization of the Debtor was confirmed by order entered herein on July 14, 1937 and that the above mentioned order directed the Committee forthwith to proceed to carry out and consummate the said Plan of Reorganization and counsel for the Committee was directed to forthwith proceed with the preparation of all indentures, agreements, documents, participation certificates, releases, satisfactions or other written instruments contemplated by the Plan of Reorganization or which may be necessary, convenient or advisable in connection with the consummation or execution of the said Plan of Reorganization.

2. That there has been prepared by counsel a form of Articles of Incorporation under which a new corporation shall be organized under the laws of the State of Illinois as the "Reorganized Company" pursuant to the said Plan of Reorganization, a copy of which form of Articles of Incorporation is attached hereto and marked Exhibit "A."

3. That there has been prepared by counsel a form of By-laws of the Reorganized Company to be so organized, a copy of which form of By-laws is attached hereto and marked Exhibit "B."

4. That there has been prepared by counsel a form of Trust Agreement under which the shares of stock of the Reorganized Company are to be held pursuant to said Plan of Reorganization, a copy of which form of Trust

Agreement is attached hereto and marked Exhibit "C."

5. That there has been prepared by counsel a form of Deed from the Trustee appointed in these proceedings to the Reorganized Company conveying and quitclaiming to the Reorganized Company all of the right, title and interest of the said Trustee in and to the real property of the Debtor, a copy of which form of Deed is attached hereto and marked Exhibit "D."

6. That there has been prepared by counsel a form of General Assignment and Assumption by and between the Trustee appointed in these proceedings and the Reorganized Company, a copy of which form of General Assignment and Assumption is attached hereto and marked Exhibit "E."

7. That there has been prepared by counsel a form of request from the Committee to the Successor Trustee under the Trust Deed dated September 1, 1928, securing the First Mortgage 6% Real Estate Gold Bonds of 252 Debtor, requesting the said Successor Trustee under said Trust Deed to execute, acknowledge and deliver an instrument of release of said Trust Deed and a satisfaction of the decree entered in the Superior Court of Cook County, Illinois, on December 18, 1936, in cause No. 519151, a copy of which form of request is attached hereto and marked Exhibit "F."

8. That there has been prepared by counsel a form of request from the Committee to Charles H. Albers, as Receiver of Central Republic Trust Company, and Central Republic Trust Company, as Successor Trustee under Trust Deed dated September 1, 1928, securing the Second Mortgage 6% Real Estate Gold Bonds of Debtor, requesting said Charles H. Albers, as said Receiver, and Central Republic Trust Company, as said Successor Trustee, to execute, acknowledge and deliver an instrument of release of the said Trust Deed, a copy of which form of request is attached hereto and marked Exhibit "G."

9. That in the event the said Trustees, or either of them, shall fail, neglect or refuse, pursuant to said request, to so release said Trust Deeds, or either of them, and in the event the said Successor Trustee under the said Trust Deed dated September 1, 1928, securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, shall fail, neglect or refuse to satisfy said decree, it will then be necessary for the Special Master heretofore appointed by this Court in said order entered July 14, 1937 to execute, acknowledge and deliver said release or re-

leases and said satisfaction; and that there has been prepared by counsel a form of said respective releases and said satisfaction, copies of which forms of releases and of satisfaction are attached hereto and marked 253 Exhibits "H" and "I," respectively.

10. That said Plan of Reorganization in Section C thereof provides that no participation certificates shall be issued to the holders of the securities, claims and interests referred to in said Section unless and until such holders shall surrender for cancellation to such agency as the Court shall approve for such purpose the securities and instruments of discharge and satisfaction of judgments as so specified therein; and it is necessary in order to consummate the said Plan of Reorganization that the Court make such approval.

Wherefore, your petitioners pray that an order be entered herein approving the form of said respective documents herein set forth as Exhibits hereto and granting such further relief as the Court may deem necessary in the premises.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm and
E. A. Kilmer,

*As the Committee Acting Under
the Above Mentioned Deposit
Agreement Dated April 25,
1933.*

By Defrees, Buckingham, Jones & Hoffman,
Its Attorneys.

Dated October 13, 1937.

EXHIBIT "A."

Form B

Before Attempting to Execute These Blanks Be Sure to
Read Carefully the Instructions on the Back Thereof.

(These Articles Must Be Filed in Duplicate.)

State of Illinois, } ss.
Cook County.

To Edward J. Hughes, Secretary of State:

We, the undersigned,

Name	Number	Street	Address City	State
E. Toelle	105	South La Salle Street,	Chicago,	Illinois
E. Clark	105	South La Salle Street,	Chicago,	Illinois
L. Healy	105	South La Salle Street,	Chicago,	Illinois

being natural persons of the age of twenty-one years or more and subscribers to the shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

Article One

The name of the corporation is: The Granada, Inc.

Article Two

The address of its initial registered office in the State of Illinois is: 77 West Washington Street, in the City of Chicago, County of Cook and the name of its initial Registered Agent at said address is: Weightstill Woods.

Article Three

The duration of the corporation is: Ninety-nine years.

Article Four

The purpose or purposes for which the corporation is organized are:

1. To own and operate a building or buildings and to engage in any and every business incidental thereto, including the operation, directly or indirectly, of restaurants, stores, shops, garages, concessions, and other like or unlike businesses, facilities and services.

2. To acquire, own, use, improve, convey and otherwise dispose of and deal in real property or any interest therein, without limitation.

3. To purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use and dispose of any personal property, or any interest therein in connection with any or all of the foregoing purposes.

Article Five

Paragraph 1: The aggregate number of shares which the corporation is authorized to issue is 5364, divided into one class. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (If any)	Number of Shares	Par value per share or statement that shares are without par value
Common	None	5364	Without par value

Paragraph 2: The preferences, qualification, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

All stock is of one class.

Article Six

The class and number of shares to be issued by the corporation before it shall commence business and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of shares	Number of shares	Consideration to be received therefor,
Common	1000	\$1000.00

Article Seven

The number of directors to be elected at the first meeting of the shareholders is: Five.

Article Eight

Paragraph 1: It is estimated that the value of all property to be owned by the corporation for the following year, wherever located, will be \$1000.00.

Paragraph 2: It is estimated that the value of the property to be located within the State of Illinois during the following year will be \$1000.00.

Paragraph 3: It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be \$1000.00.

Paragraph 4: It is estimated that the gross amount of business which will be transacted at or from places of business in the State of Illinois during the following year will be \$1000.00.

} Incorporators.

Oath and Acknowledgment

State of Illinois, }
Cook County. } ss.

I, _____, a Notary Public, do hereby certify that on the _____ day of October, 1937, E. Toelle, E. Clark and L. Healy personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

Notary Public.

Form B

Box.....

File.....

Articles of Incorporation of The Granada, Inc.

The following fees are required to be paid at date of issuing certificate of incorporation: Initial license fee of 50c per \$1000.00; filing fee \$20.00; franchise tax of 1/20 of 1% of the amount of stated capital and paid-in surplus which the corporation is to receive for the shares issued before it commences business, provided for the issue of \$200,000.00 or less the minimum franchise tax is as follows: January, \$15; February, \$14.17; March, \$13.34; April, \$12.50; May, \$11.67; June, \$10.84; July, \$10.00; Aug., \$9.17; Sept., \$8.34; Oct., \$7.50; Nov., \$6.67; Dec., \$5.84.

In excess of \$20,000.00 the franchise tax per \$1000.00 is as follows: Jan., \$0.75; Feb., .709; March, .667; April, .625; May, .584; June, .542; July, .50; Aug., .4583; Sept., .4167; Oct., .3749; Nov., .3333; Dec., .2916.

All stock issued in excess of the amount represented in the Articles of Incorporation to be issued by the Corporation before it shall commence business must be reported within 60 days from date of issuance thereof and franchise tax and initial license fees paid thereon; otherwise, the corporation is subject to a penalty of 1% for each month on the amount until reported and subject to a fine not to exceed \$500.00.

The same fees are required for a subsequent issue of stock except the filing fee is \$1.00 instead of \$20.00.

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EXHIBIT "B."

By-Laws of The Granada, Inc.
an Illinois corporation

Article I

Offices

The principal office of the corporation in the State of Illinois shall be located in the City of Chicago, and County of Cook. The corporation may have such other offices, either within or without the State of Illinois as the business of the corporation may require from time to time.

Article II

Shareholders

Section 1. Annual Meeting. The annual meeting of the shareholders shall be held on the third Wednesday of January in each year, beginning with the year 1938, at the hour of 2:30 P. M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the shareholders may be called by the president, by the board of directors or by the holders of not less than one-fifth of all outstanding shares of the corporation.

Section 3. Place of Meeting. The board of directors may designate any place, either within or without the State of Illinois, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. A waiver of notice signed by all shareholders may designate any place, either within or without the State of Illinois, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in the State of Illinois, except as otherwise provided in Section 5 of these by-laws.

Section 4. Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the shareholder at his address as it appears

on the records of the corporation, with postage thereon prepaid.

Section 5. Meeting of all Shareholders. If all of the shareholders shall meet at any time and place, either within or without the State of Illinois, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 6. Closing of Transfer Books or Fixing of Record Date. The Board of directors of the corporation may close its stock transfer books for a period not exceeding forty and not less than ten days prior to the date of a meeting of shareholders, or the date for the payment of any dividend or for the allotment of rights, or the date when any exchange or reclassification of shares shall be effective; or in lieu thereof, may fix in advance a date, not exceeding forty and not less than ten days prior to the date of any meeting of shareholders or to the date for the payment of any dividend or for the allotment of rights, or to the date when any exchange or reclassification of shares shall be effective, as the record date for the determination of shareholders entitled to notice of, or to vote at, such meeting, or shareholders entitled to receive payment of any such dividend or to receive any such allotment of rights, or to exercise rights in respect of any exchange or reclassification of shares; and the shareholders of record on such date shall be the shareholders entitled to notice of and to vote at, such meeting, or to receive payment of such dividend or to receive such allotment of rights or to exercise such rights in the event of an exchange or reclassification of shares, as the case may be. If the transfer books are not closed and no record date is fixed by the board of directors, the date on which notice of the meeting is mailed shall be deemed to be the record date for the determination of shareholders entitled to vote at such meeting. Transferees of shares which are transferred after the record date shall not be entitled to notice of or to vote at such meeting.

Section 7. Voting Lists. The officer or agent having charge of the transfer book for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of, and the number of shares held by each, which list, for a period of ten days prior to such meeting,

shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholders at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time 258 of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in this state, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Section 8. Quorum. A majority of the outstanding shares of the corporation, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders; provided, that if less than a majority of the outstanding shares are represented at said meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Section 10. Voting of Shares. Each outstanding share, regardless of class, shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the

transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Section 12. Cumulative Voting. In all elections for directors, every shareholder shall have the right to vote, in person or by proxy, for the number of shares 259 owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall see fit.

Section 13. Informal action by shareholders. Any action required to be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Article III

Directors

Section 1. General Powers. The business and affairs of the corporation shall be managed by its board of directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the corporation shall be five. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. Directors need not be residents of Illinois or shareholders of the corporation.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, either within or without the State of Illinois, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the

board of directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the State of Illinois, as the place for holding any special meeting of the board of directors called by them.

Section 5. Notice. Notice of any special meeting shall be given at least two days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business 260 to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 6. Quorum. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, provided, that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

Section 8. Vacancies. Any vacancy occurring in the board of directors or in a directorship to be filled by reason of an increase in the number of directors, may be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. The director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 9. Compensation. Directors as such shall not receive any stated salaries for their services, but by resolution of the board of directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors; provided that nothing herein contained shall be construed to

preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Article IV.

Officers.

Section 1. Number. The officers of the corporation shall be a president, one or more vice-presidents (the number thereof to be determined by the board of directors), a treasurer; a secretary and such other officers as may be elected in accordance with the provisions of this article. The board of directors, by resolution, may create the offices of one or more assistant treasurers and assistant secretaries, all of whom shall be elected by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until his successor shall have been duly chosen 261 and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the corporation and shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the shareholders and of the board of directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation, any deeds, mort-

gages, bonds, contracts, or other instruments which the board of directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law or otherwise to be signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 6. The Vice-Presidents. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice-president may sign, with the secretary or an assistant secretary, certificates for shares of the corporation; and shall perform such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 7. The Treasurer. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such security or securities as the board of directors shall determine. He shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these by-laws; (b) in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 8. The Secretary. The Secretary shall: (a) keep the minutes of the shareholders' and of the board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all stock certificates prior to the issue thereof and to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these by-laws; (d) keep a register

of the postoffice address of each shareholder which shall be furnished to the secretary by such shareholder; (e) sign with the president, or vice-president, certificates for shares of the corporation, the issue of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the corporation; (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 9. Assistant Treasurers and Assistant Secretaries. The assistant treasurers shall respectively, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries as thereunto authorized by the board of directors may sign with the president or a vice-president certificates for shares of the corporation, the issue of which shall have been authorized by a resolution of the board of directors, and in general shall perform such duties as shall be assigned to them by the treasurer or the secretary, respectively, or by the president or the board of directors.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

Article V.

Contracts, Loans, Checks, Deposits, etc.

Section 1. Contracts. The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

263 Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from

time to time be determined by resolution of the board of directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositaries as the board of directors may select.

Article VI.

Certificates for Shares and Their Transfer.

Section 1. Certificates for Shares. Certificates representing shares of the corporation shall be in such form as may be determined upon by the board of directors. Such certificates shall be signed by the president or a vice-president and by the secretary or an assistant secretary and shall be sealed with the seal of the corporation. All certificates for shares shall be consecutively numbered. The name of the person owning the shares represented thereby with the number of shares and date of issue shall be entered on the books of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfers of shares of the corporation shall be made only on the books of the corporation by the registered holder thereof or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation.

Article VII.

Fiscal Year.

The fiscal year of the corporation shall begin on the first day of January in each year and end on the thirty-
264 first day of December in each year.

Article VIII.

Dividends.

The board of directors may from time to time, declare, and the corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its articles of incorporation.

Article IX.

Seal.

The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Illinois."

Article X.

Waiver of Notice.

Whenever any notice whatever is required to be given under the provisions of these by-laws or under the provisions of the articles of incorporation or under the provisions of the Business Corporation Act of the State of Illinois, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XI.

Amendments.

These by-laws may be altered, amended, or repealed and new by-laws may be adopted at any meeting of the board of directors of the corporation by a majority vote of the directors present at the meeting.

EXHIBIT "C".

Granada Apartments Corporation Trust.
Stock Trust Agreement.

This Agreement, dated as of the _____ day of _____, A. D. 1937, by and between The Granada, Inc., an Illinois corporation (hereinafter sometimes called the "Corporation"), Party of the First Part; and _____, as Trustees (hereinafter sometimes called the "Trustees"), Parties of the Second Part; and the holders from time to time of Participation Certificates issued and to be issued hereunder, Parties of the Third art,

Witnesseth That:

The Granada Apartments, Inc., an Illinois corporation, and the Debtor in the reorganization proceedings hereinafter mentioned, was the holder of record of the title to the following described real estate:

Lots Thirty-two (32) and Thirty-three (33) of Out Lot "C" in Wrightwood, a Subdivision of the South West quarter of Section Twenty-eight (28), Township Forty (40) North, Range Fourteen (14), East of the 3rd P. M., in Cook County, Illinois;

said real estate and the building thereon being herein sometimes called "Granada Apartments", which property was subject to the lien of the First Mortgage 6% Real Estate Gold Bonds (hereinafter sometimes called "Old Bonds") secured by a Trust Deed dated September 1, 1928, made by Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, as Trustee.

266 Proceedings under Section 77B of the Bankruptcy Act as amended, for the reorganization of the Corporation, are now pending in the United States District Court for the Northern District of Illinois, Eastern Division (hereinafter sometimes called the "Court"), said proceedings being entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor. In Proceedings for Reorganization of a Corporation. In Bankruptcy. No. 65811."

By order entered in said proceedings on July 14, 1937, the Court confirmed and approved a certain Plan of Reorganization dated May 21, 1937, which Plan of Reorganization provides that the shares of stock of the New Company

to be issued thereunder are to be issued to and held and owned under a Trust Agreement by five Trustees.

The Court has duly approved the form of this Trust Agreement and the terms and provisions hereof, and the Trustees herein named, and said Trustees have consented to act under the Trust Agreement for the purposes herein provided.

It is a constituent part of the Plan of Reorganization and of the conditions and considerations upon which the Plan of Reorganization was approved that this Trust Agreement shall be executed and delivered and the Participation Certificates hereinafter mentioned be issued from time to time as in this Trust Agreement provided, and this Agreement has been entered into for the benefit and protection of the creditors and stockholders of Corporation and the holders of Participation Certificates issued hereunder, as their interests may appear.

The Granada, Inc., as the "New Company" described in the Plan of Reorganization, is duly organized and existing under the laws of the State of Illinois with an authorized capital stock consisting of shares without par value. All of said shares of stock to be presently issued have been or are about to be issued to the Trustees under the Plan of Reorganization and are to be held by them and subject to the provisions of this Agreement.

Now, Therefore, in consideration of the premises and the mutual covenants herein contained and other good and valuable considerations, the receipt whereof is hereby acknowledged, the several parties hereto mutually covenant and agree as follows:

1. The Trustees hereby become Trustees of the Trust created by this Agreement (herein sometimes called the "Trust") and hereby declare that they will hold all shares of capital stock deposited with them hereunder, all dividends thereon and distributions of capital in respect thereof, all avails and proceeds arising from any sale or exchange thereof, and all other property which they may hereafter acquire as such Trustees, in trust, upon the terms and conditions hereinafter set forth, to manage and dispose of the same for the benefit of the holders from time to time of participation certificates evidencing shares in the Trust.

2. The Trustees will, upon delivery to them of shares of capital stock, issue or cause to be issued, participation certificates (herein sometimes called "Participation Certificates") evidencing shares in the Trust in the form here-

inafter provided. The total number of shares in the Trust shall not exceed the number of shares of capital stock deposited with the Trustees hereunder.

The shares in the Trust, evidenced by Participation Certificates, shall be personal property, and upon the death of any holder of a Participation Certificate the interest of such holder shall descend as personal property.

No holder of a Participation Certificate shall at any time have any claim, right, interest or title, legal or equitable, in or to assets and property at any time held by the Trustees under the Trust, but shall have an interest only in the net avails or proceeds thereof as and when distributed by the Trustees, and not otherwise.

The Trustees shall be fully protected in issuing and delivering Participation Certificates in accordance with the said Plan of Reorganization.

3. Participation Certificates are to be substantially in the form set forth in Exhibit A hereto attached.

The Trustees may, from time to time, make such changes in the form of Participation Certificates as the Trustees may deem advisable, provided that such changes shall not be substantially inconsistent with the substantive provisions of this Agreement.

The Trustees may execute any or all Participation Certificates, either in their own names (making appropriate changes in the form thereof for that purpose), or by the Depositary (hereinafter mentioned) as their agent, or by any agent designated by them, full power being hereby conferred upon the Depositary for that purpose.

4. The Trustees shall keep at the office of the Depositary suitable books for recording the transfer of Participation Certificates, and any such Participation Certificate shall be transferable upon the said books by the registered holder thereof, or by his duly authorized agent or his legal representative, but only upon the surrender of such Participation Certificates to be transferred, duly endorsed.

Participation Certificates and any and all rights and interests of any holder thereof and title thereto shall be transferable by delivery thereof when duly assigned in writing by the registered holder thereof, either in person or by duly authorized agent, or by his legal representative, but until transferred on said books of the Trustees, the Trustees may treat the registered holder of any Participation Certificate for the times being hereunder as the owner thereof for all purposes whatsoever. The Trustees may

establish such rules and regulations in respect of transfers of Participation Certificates as they may deem advisable. Such books for the recording of transfers of Participation Certificates may be closed by the Trustees at any time (for periods not exceeding sixty (60) days) prior to any distribution in respect thereof or for the purposes of any action to be taken hereunder.

Any person becoming entitled to any share or shares in the Trust in consequence of the death, bankruptcy or insolvency of any holder of a Participation Certificate, or in any other way than by transfer as hereinabove provided, upon surrender of such Participation Certificate or Certificates evidencing such share or shares, and upon the production of such evidence of his title and such indemnity as may be required by the Trustees, shall be entitled to receive a new Participation Certificate or Participation Certificates evidencing such share or shares in the Trust.

5. In the event that any claim shall be made that any Participation Certificate issued hereunder has become mutilated or has been lost or destroyed, the Trustees may, in their uncontrolled discretion, issue in exchange for, and upon cancellation of the mutilated Participation Certificate, or in lieu of the Participation Certificate so claimed to have been lost or destroyed, a new Participation Certificate representing the same number of shares in the Trust upon the production of evidence of such mutilation, loss or destruction satisfactory to the Trustees, and upon receipt of indemnity satisfactory to the Trustees, and upon compliance also with such other reasonable regulations as the Trustees may prescribe.

269 6. Subject to the provisions and limitations in this Paragraph 6 contained, the Trustees shall have full power to take any action or give any consent with the same force and effect as if the Trustees were the absolute owners of the shares held in the Trust.

The Trustees may exercise all voting power incident to the shares held by them hereunder at elections of Directors and, except as hereinafter provided, upon all other matters presented at meetings of stockholders of the Corporation including (but without limiting the generality of the foregoing) proposals for the amendment in any respect whatsoever of the Articles of Incorporation of Corporation and for the merger and consolidation of the Corporation and the Corporation's property and assets. In connection with any amendment merger or consolidation, the Trustees shall have power to surrender the Certificates for shares held

hereunder and accept in lieu thereof Certificates for shares issued pursuant to such amendment, merger or consolidation. Before the Trustees may (a) sell or exchange the shares held by them hereunder, or (b) vote such shares in favor of, or give any consent with respect to any proposed sale of the Granada Apartments, or (c) amend this Agreement in a manner which in the judgment of the Trustees would materially and adversely affect substantial rights of the holders of Participation Certificates, notice shall be given to all holders of Participation Certificates summarizing the principal terms and conditions of the proposed sale. The Trustees shall not vote the stock in favor of such proposed sale, if within twenty (20) days from the date of the mailing of such notice, written objections thereto shall be filed with the Depositary by the holder or holders of Participation Certificates representing one-third or more of the outstanding shares in the Trust. The limitations in this Section 6 contained on voting the capital stock of the Corporation deposited hereunder in favor of a sale of the Granada Apartments shall not apply to voting such capital stock in favor of any mortgage of, or the creation of any lien on, or the leasing of the Granada Apartments or any property used in connection therewith.

The Trustees shall have power to sell, exchange or contract to sell or exchange all or any part of the shares held by them hereunder, except as herein otherwise specifically provided, for cash or other property, and, if so desired, upon credit.

No person shall be required to see to the application of any moneys or property paid, assigned, conveyed or delivered to the Trustees.

270 The Trustees shall not have any power or authority to borrow money on the credit or on behalf of the holders of Participation Certificates personally, or of the Trustees individually, or to make any contract binding the holders of Participation Certificates personally, or the Trustees individually, or to incur any obligations against the holders of Participation Certificates personally, or the Trustees individually, and no holder of any Participation Certificate as such shall have any liability whatsoever on account of any obligations or liabilities of the Trust of whatsoever kind or character, or on account of any action of the Trustees hereunder.

7. Subject to expenses and prior charges, if any, all cash dividends which shall be received by the Trustees in respect of any shares of capital stock of any corpora-

tion constituting part of the Trust property, all cash received by the Trustees as a return of capital in respect of any such shares of capital stock, and all other cash income of the Trust Property shall be distributed by such Trustees at such time or times as may be designated by the Trustees among the holders (of record on the date of payment of such dividends, or date of receipt of such other cash, or of record on such other date as the Trustees in their sole discretion shall determine) of Participation Certificates pro rata, according to the number of their shares in the Trust.

8. Upon the termination of the Trust, the Trustees forthwith shall proceed to close up the affairs of the Trust and to convert all of the assets of the Trust into money, stocks, bonds, or other like or unlike securities, as soon as practicable and within two (2) years, and to distribute the same as provided herein.

While engaged in closing the affairs of the Trust, the Trustees shall have each and every power possessed by them during the term of the Trust and the decisions, contracts and acts of the Trustees by any two or more of their number during the period for closing the affairs of the Trust shall be of the same force and effect as if made or done during the term of the Trust.

9. As soon as practicable after the termination of the Trust, the Trustees, upon surrender of any Participation Certificates then outstanding, will, on payment, if the Trustees shall so require, of a sum sufficient to reimburse them for any stamp tax or other governmental or other charge in connection with such delivery, deliver or cause to be delivered to the holders of Participation Certificates, at the office of the Depositary, such proportionate amount of the Trust Property, in cash or in kind, as the number of shares in the Trust evidenced by the respective Participation Certificates so surrendered shall bear to 271 the entire number of shares in the Trust then outstanding.

Whenever, pursuant to the foregoing provisions of this Section 9, the Trust Property shall become deliverable, or at any time thereafter, the Trustees may deposit with any bank or trust company in the City of Chicago, Illinois, the Trust Property so deliverable, accompanied, if necessary, by proper instruments of assignment and transfer in blank, duly executed, with authority to such bank or trust company to make delivery of such Trust Property upon surrender of such Participation Certificates and

upon payment of any tax or charge payable upon such delivery, as above specified. Thereupon, all further obligation or duty of the Trustees under this Agreement shall terminate.

10. The Trustees shall have power, in their uncontrolled discretion, by the action of a majority of such Trustees, to terminate this Agreement and the Trust hereby created at any time. A copy of the resolution or instrument declaring such termination shall be filed with the Depositary and a notice thereof given to holders of Participation Certificates.

This Agreement and the Trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then outstanding hereunder, which Participation Certificates must also represent a majority in number of the whole shares in the Trust, provided that, to be effective, such written directions shall fix the date of such termination and shall be filed with the Depositary at least thirty (30) days prior to the date so fixed for such termination.

Within sixty (60) days prior to the completion of each two-year period during the continuation of the Trust, beginning with the two-year period commencing on the date of this Agreement, the question of the termination of this Agreement and the Trust hereby created shall be submitted to a vote of the holders of Participation Certificates, either at a meeting called for that purpose, at which such holders may be represented in person or by proxy, or by mail ballot, and if the holders of Participation Certificates representing a majority of the Participating Shares in the Trust hereby created, who are also a majority of the holders of Participating Shares in the Trust hereby created, shall at any such meeting, or on or before the date set by the Trustees for the completion of such a vote by mail ballot vote in favor of its termination, this Agreement and the Trust hereby created shall terminate on the first day of the next calendar month after the date of the completion of such vote.

Notice of any such termination of this Agreement shall be given to all holders of Participation Certificates.

Unless previously terminated by action of the Trustees in their absolute discretion, as provided in this Section 10, this Agreement shall continue in full force and effect to and including _____, 1947, unless this

Agreement shall have theretofore been extended pursuant to the provisions of Section 17 hereof.

11. Any Trustee may at any time resign by delivering to the other Trustees at the office of the Depositary his resignation in writing to take effect ten (10) days thereafter, or upon its earlier acceptance by the Trustees. By unanimous vote of all of the Trustees at any time acting hereunder, the number of Trustees may be increased or decreased to such number as the Trustees may desire. In case of increase in the number of Trustees, the additional Trustees shall be appointed by a vote or action of a majority of the then Trustees.

In the event of the death, resignation or inability of any Trustee to act as Trustee, or of a vacancy in the office of any such Trustee arising from any cause, the vacancy so occurring shall be filled by the appointment of a successor trustee to be named by the remaining Trustee or Trustees, by a written instrument filed with the Depositary.

In the event of any vacancy or vacancies among the Trustees, all the rights, powers, duties and discretions of the Trustees during such vacancy may be exercised at any time and from time to time and until the filling of any vacancy or vacancies, by the remaining Trustees, if only two, or by the remaining Trustee, if only one.

The term "Trustees" as used in this Agreement and in all Participation Certificates issued hereunder shall apply to the Trustees as originally constituted and to their successors. Notwithstanding any change in the Trustees, the Trustee for the time being may adopt and issue Participation Certificates in the names of the original Trustees.

Succeeding Trustees shall have the same rights, titles, powers, privileges and immunities as the Trustees herein named, without necessity for assignment, transfer or conveyance of any assets or property of the Trust.

273 When any Trustee shall cease to be a Trustee hereunder, for any reason, such retiring Trustee and his heirs, executors, administrators, assigns and representatives shall convey all property, real, personal or mixed, belonging to the Trust by deeds, assignments or bills of sale, without covenants, to the remaining and succeeding Trustees, but the title and tenure of the Trustees shall be of a joint nature (with right of survivorship) and not common.

The Corporation hereby agrees to pay and discharge

all expenses and liabilities, whether arising in tort or contract, incurred by the Trustees in connection with the Trust, as well as reasonable compensation for their services hereunder; such aggregate annual compensation of the Trustees shall not exceed, however, one per cent (1%) of the gross annual income of the Corporation, provided, however, that if the Trustees elect one of their number to be managing Trustee, he may be paid and receive a further additional reasonable compensation, but such that his total compensation shall not exceed the Chicago Real Estate Board rate for like services, and provided that in any event the Trustees shall be entitled to hold and resort to the Trust Property for the payment and discharge of any such expenses and liabilities, including such reasonable compensation.

12. The action of the majority of the Trustees, expressed from time to time at a meeting, or by writing without a meeting, shall, except as otherwise in this Agreement stated, constitute the action of the Trustees and have the same effect as if assented to by all. At a meeting of the Trustees, any Trustee may vote in person or by proxy to any other person (who may be a Trustee) and any Trustee may give a power of attorney to any other person (who may be a Trustee) to sign for him in case of action of the Trustees taken in writing without a meeting. The Trustees may adopt their own rules and procedure. Any Trustee may act as a director or officer of the Corporation or any other corporation, the shares of which constitute a part of the Trust Property, and he, or any firm of which he may be a member, or any corporation of which he may be a stockholder, director, officer or employee, may, to the extent permitted by law, contract with the Corporation, or such other corporation, or with the Trustees or be or become pecuniarily interested in any matter or transaction with which the Corporation, or such other corporation, or the Trust may in any way be concerned as fully as though he were not acting as such Trustee.

The Trustee may buy or sell to, and deal with or hire, the holder of any Participation Certificate in the same manner and with the same effect as if such holder were a stranger.

Any Trustee, or any firm or corporation with which he is associated or in which he is interested, may hold

and acquire individually any shares in the Trust without disqualifying himself or affecting the exercise by him of any and all powers conferred in this Agreement.

274 Any Trustee or Trustees, or any such firm of corporation, may buy or sell shares in the Trust in the same manner as if he or they were not Trustees.

13. The Trustees may, in this discretion, advise with counsel and anything done or suffered in good faith by the Trustees or the Depositary, in accordance with the opinion of counsel, shall be conclusive in favor of the Trustees or such Depositary, and upon all holders of Participation Certificates and all other interested parties. No Trustee shall incur any responsibility by reason of any error of judgment or of law or of anything done or omitted to be done under this Agreement, except his own wilful malfeasance.

The responsibility and liability of the Trustees hereunder in respect of shares of stock or other Trust Property held by them as Trustees hereunder shall be that of Trustees only, and no responsibility or liability in respect of said shares or other Trust Property shall in any manner attach to the Parties of the Third Part in their individual capacity.

14. Any notice to be given to the holders of Participation Certificates shall be sufficiently given if mailed, postage prepaid, addressed to the holders of record of Participation Certificates as shown on the books of the Trustees at the close of business on the business day next preceding that on which such notice shall be mailed at the addresses furnished by such holders to the Trustees or to the Depositary; or, if no address has been given, then addressed in care of General Delivery, Chicago, Illinois. Any notice, when given by the Trustees as above provided, shall be taken and considered as though personally served upon all holders of Participation Certificates issued hereunder, and such notice shall be the only notice required to be given under any of the provisions of this Agreement. Any notice given to a holder of a Participation Certificate shall be effective and any action pursuant thereto shall be binding upon such holder regardless of any legal or other disability of such holder or any person in any way interested in such Participation Certificate.

15. Any request or other instrument required or per-

mitted by this Agreement to be signed or executed by the holders of Participation Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. The fact and date of the execution by any person so making such request or other instrument in writing, or of a writing appointing any such agent or attorney, may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of Illinois, acknowledgments of conveyances of real estate, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, and a certificate as aforesaid shall be conclusive in favor of the Trustees with respect to any and all action taken by the Trustees pursuant to such request or other instrument.

16.

is hereby appointed Depositary (herein sometimes called "Depositary") for the purposes of this Agreement. The Trustees may deposit certificates for shares of capital stock of any corporation or any other personal property at any time constituting part of the Trust Property with such Depositary, and shall be under no liability for any loss of such property, so deposited by the Depositary.

The expenses incurred by the Depositary in the performance of its duties hereunder and its reasonable compensation shall constitute an expense of the Trustees payable by the Corporation in accordance with the provisions of Section 11 hereof, or, in default of such payment by the Corporation, then payable out of the Trust Property before any distribution thereof is made to holders of Participation Certificates.

No Depositary hereunder shall be liable or responsible to anyone for any action taken or suffered to be taken in good faith, or for anything other than its own wilful malfeasance, and no Depositary shall incur any liability by reason of anything done or permitted to be done at the request, or at the direction, of the Trustees, and any Depositary shall be fully protected in all cases in acting upon the written directions, or with the written approval of a majority of the Trustees.

Any Depositary may at any time resign hereunder by delivering to the Trustees its resignation in writing, to

take effect ten (10) days thereafter, unless sooner accepted by the Trustees. Any Depositary may be removed at any time by the Trustees by delivering to such Depositary a written notice of removal, signed by all of the Trustees, to take effect not less than ten (10) days thereafter, unless sooner acquiesced in by the Depositary. In case, at any time, any Depositary shall resign or shall be removed, or otherwise shall be incapable of acting hereunder, a successor may be appointed by the Trustees by written appointment filed with such successor Depositary. Upon the appointment of any successor Depositary, all rights, powers and duties of such retiring Depositary hereunder shall immediately vest in such successor Depositary with-
276 out any further act; but such retiring Depositary forthwith, upon the written request of such successor Depositary upon payment of any liabilities constituting a charge thereon, shall deliver to such successor Depositary all securities, moneys and property of every kind held by the retiring Depositary hereunder.

The term "Depositary," as used in this Agreement, shall include any such successor Depositary for the time being acting hereunder.

17. The Trustees may, at any time by written instrument duly signed by all of the Trustees and delivered to the Depositary, make any addition, alteration or amendment to this Agreement, and any such addition, alteration or amendment, so made, shall have the same force and effect as if made by instrument executed by all of the parties hereto and by all holders of Participation Certificates at the time outstanding hereunder; provided, however, that no such addition, alteration or amendment which, in the judgment of the Trustees, materially and adversely affects substantial rights of holders of Participation Certificates shall be made, if upon prior notice in writing thereof, which shall be given to the holders of all Participation Certificates then outstanding hereunder, the holders of Participation Certificates covering at least one-third of the whole number of Participating Shares in the Trust then outstanding hereunder, shall, in writing filed with the Depositary within twenty (20) days after the date of the mailing of such notice, object to or dissent from any such proposed addition, alteration or amendment. Any holder of Participation Certificates who shall not, within the time and in the manner aforesaid, have objected to or dissented from any such proposed addition,

alteration or amendment shall be conclusively deemed to have consented to the same. No addition, alteration or amendment to this Agreement shall be made which shall materially change or alter the duties, rights, powers or limitations of liability of the Depositary without its consent thereto in writing.

If any proposed addition, alteration or amendment of this Agreement shall involve an extension of the term thereof, then notwithstanding anything to the contrary herein contained, any holder of Participation Certificates objecting to such extension in the manner hereinbefore provided shall be entitled to receive, upon the date fixed for the termination of this Agreement prior to the adoption of such proposed extension, such proportionate amount of the Trust Property, in cash or in kind, as the number of shares in the Trust evidenced by such Participation Certificates shall bear to the total number of shares in the Trust then outstanding, but only upon surrender of such Participation Certificates to the Depositary and upon payment of an amount sufficient to reimburse the Trustees for any stamp tax or other governmental charge in connection with such distribution.

18. A copy of this Agreement shall be filed with the Depositary and, together with the records of the Depositary, as such Depositary, shall be open to the inspection of any registered holder of a Participation Certificate and of the Corporation and its agents or attorneys duly authorized in writing during business hours, upon the furnishing by any applicant of satisfactory identification.

19. This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties here to and any and all persons claiming through or under any of them.

20. This document may be executed in any number of counterparts, all of which shall be construed as one instrument.

In Witness Whereof, the Granada, Inc., has caused this Agreement to be signed in its name and behalf by its President or its Vice President and its corporate seal to be hereunto affixed and attested by its Secretary, and the Trustees named herein have hereunto set their hands and seals in token of their acceptance of the Trust hereby created, and _____, to evidence its acceptance of its appointment as Depositary hereunder, has caused this Agreement to be signed in its name and

behalf by its Vice President and its corporate seal
278 to be hereunto affixed and attested by its Assistant
Trust Officer, all as of the day and year first above
written.

The Granada, Inc., a corporation,
By _____

President.

Attest:

Secretary.

(Seal)

(Seal)

(Seal)

As Trustees.

a corporation.

By _____

Vice President.

Attest:

Secretary.

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EXHIBIT A.

Form of Participation Certificate.

Certificate Number _____ Shares

The Granada, Inc., a Corporation.

(A Trust Estate.)

This Is To Certify That _____
is the owner of _____ shares in the Trust created
by a certain Trust Agreement dated the _____ day of
_____, A. D. 1937, which was entered into
by and between the Granada, Inc., an Illinois cor-
poration; _____
and _____, as the Trustees initially con-
stituted by said Trust Agreement, and the holders from
time to time of Participation Certificates issued and to
be issued from time to time thereunder, which said Trust
Agreement is hereby made a part hereof and to which ref-
erence is made for the terms and conditions thereof and
for the obligations imposed and the rights given hereby.
This Certificate is issued against the deposit of a number

of shares of the capital stock, without par value, of said The Granada, Inc., equal to the number of shares in said Trust represented by this Certificate.

The Holder or owner of this Certificate, by taking this Certificate, assents to and agrees to be bound by the terms and provisions of said Trust Agreement. The holder or owner of this Certificate shall at no time have any right, title or interest, legal or equitable, in or to any assets or property of whatsoever nature at any time held by the Trustees under the Trust created by said Trust Agreement, but shall have an interest only in the net avails or proceeds thereof, as provided in said Trust Agreement.

Subject to the terms hereof and of said Trust Agreement, the interest evidenced by this Certificate is transferable, but only upon the surrender of this Certificate for cancellation, properly endorsed by the assignor in the form provided therefor on the reverse hereof and upon the issuance of a new certificate or certificates in lieu hereof.

The attention of every prospective assignee of this Certificate and of the shares in the Trust created under said Trust Agreement, which are evidenced hereby is specifically directed to the provisions of said Trust Agreement concerning the right and duty of the Trustees and of all persons to treat the person whose name appears as the owner hereof on the records kept by the Trustees as the owner of this Certificate and of the shares in the Trust created by said Trust Agreement evidenced hereby and as entitled to all the benefits accruing to such owner, irrespective of any notice to the contrary, until this Certificate, properly endorsed as above provided, is surrendered to the Trustees for cancellation.

In Witness Whereof, the said Trustees have caused this Participation Certificate to be signed by their duly appointed agent on _____

Trustees,
By their duly appointed Agent,

By _____
Depository,
Authorized Signature.

The Form of blank endorsement for assignment on the reverse of Participation Certificates shall be as follows:

Form of Endorsement by Assignor.
(On Reverse of Certificate)

For Value Received, the undersigned hereby sells, assigns, transfers and sets over unto _____ of _____, in the State of _____, all right, title and interest, of the undersigned in and to the within Certificate and the benefits evidenced thereby, and hereby authorizes the Trustees therein referred to to cancel the within Certificate and to issue a certificate or certificates in lieu thereof to said assignee(s).

Dated this _____ day of _____, A. D. 193_____.

(Seal)

Witness:

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EXHIBIT "D".

22120—FWB:LH-10-12-37

Deed.

Know All Men By These Presents, that

Whereas, by order of court entered May 17, 1937 in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, under Section 77B of the Bankruptcy Act, as amended, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," Weightstill Woods was temporarily appointed Trustee of all of the property and assets of said Granada Apartments, Inc., and the said Weightstill Woods subsequent thereto has been and now is Trustee as aforesaid; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed by order of said Court on July 14, 1937, which said Plan of Reorganization provided in part that all property and assets of Debtor shall be conveyed, transferred and assigned to a new corporation free and clear of all claims, of creditors and stockholders of the Debtor except as otherwise provided in the said Plan of Reorganization; and

Whereas, pursuant to order of said Court entered October _____, 1937 a new corporation named "The Granada, Inc." has been organized under the laws of the State of

Illinois for the purpose of consummating said Plan of Reorganization, and Weightstill Woods, as said Trustee, by said order was authorized and directed to convey and transfer all of his right, title and interest in and to the property and assets of said Debtor to said new corporation:

Now, Therefore, Weightstill Woods, as Trustee as aforesaid, for and in consideration of the premises and pursuant to the said Plan of Reorganization and pursuant to said order of said Court entered October _____, 1937, conveys and quitclaims to The Granada, Inc., an Illinois corporation, its successors and assigns all his right, title and interest in and to the following described property:

Lots, thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois, together with all improvements thereon and appurtenances thereunto belonging.

In Witness Whereof, the said Weightstill Woods has hereunto set his hand and seal this _____ day of _____, A. D., 1937.

_____(Seal)
As Trustee of Granada Apartments, Inc., as aforesaid.

282 State of Illinois }
County of Cook } ss.

I, _____, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Weightstill Woods, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Trustee, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the use and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 1937.

Notary Public.

EXHIBIT "E."

General Assignment and Assumption.

This Agreement made this day of
A. D., 1937, by and between Weightstill Woods, Party of
the First Part, and The Granada, Inc., an Illinois corpora-
tion (hereinafter sometimes called "Reorganized Com-
pany"), Party of the Second Part,

Witnesseth:

Whereas, Weightstill Woods, Party of the First Part,
has heretofore been appointed as Trustee of the property
and assets of Granada Apartments, Inc., an Illinois corpo-
ration, the Debtor (hereinafter called "Debtor"), in pro-
ceedings pending in the District Court of the United States,
for the Northern District of Illinois, Eastern Division, in
a cause entitled "In the Matter of Granada Apartments,
Inc., a corporation, Debtor, No. 65811;" and

Whereas, a certain Plan of Reorganization of the Debtor
has been heretofore confirmed in said proceedings by order
entered therein on July 14, 1937, which said Plan of Re-
organization provided in part that all of the property and
assets of the Debtor shall be conveyed, transferred and as-
signed to a new corporation, free and clear of all claims of
creditors and stockholders of the Debtor, except as other-
wise provided in the said Plan of Reorganization; and

Whereas, pursuant to order entered in said proceedings
on October, 1937, a new corporation, Party of the Sec-
ond Part herein, has been organized for the purpose of
consummating said Plan of Reorganization:

Now, Therefore, said Weightstill Woods, Party of First
Part, as Trustees as aforesaid, for and in consideration
of the premises and of the covenants and agreements of the
Reorganized Company hereinafter contained and pursuant
to the said Plan of Reorganization and pursuant to the
said orders entered in said proceeding on July 14, 1937
and October, 1937, has conveyed, assigned, transferred
and set over and does hereby convey, assign, transfer and
set over unto The Granada, Inc., an Illinois corporation,
Party of the Second Part, its successors and assigns, all
of his right, title and interest as Trustee aforesaid in and
to all and singular the property, rights and assets of said
Granada Apartments, Inc., of every name and description,
real, personal and mixed, of whatever nature and where-

soever situate, or in which he may have any interest or to which he may be entitled.

This Agreement further witnesseth that The Granada, Inc., Party of the Second Part, its successors and assigns, in consideration of the said conveyance, transfer and assignment, hereby covenants and agrees to and with the said Weightstill Woods, Party of the First Part, as said Trustee, to take and receive said property and assets of said

Granada Apartments, Inc., subject (and subject only) 284 to all claims, liabilities and obligations to be assumed by the Reorganized Company, pursuant to and as provided for and in said Plan of Reorganization and said order confirming said Plan of Reorganization; and the Reorganized Company hereby assumes all such claims, liabilities and obligations and covenants and agrees to pay, perform and discharge the same in the manner and as provided for in said Plan of Reorganization and said order confirming said Plan of Reorganization.

In Witness Whereof, Weightstill Woods, as Trustee, Party of the First Part, has hereunto set his hand and seal, and the Reorganized Company, Part of the Second Part, has caused these presents to be executed by its President and attested by its Secretary and its corporate seal to be hereunto affixed, all as of the day and year first above written.

(Seal)

Trustee, Party of the First Part.

The Granada, Inc., an Illinois corporation, Party of the Second Part,

By

President.

Attest:

Secretary.

State of Illinois, }
County of Cook. } ss.

I, _____, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Weightstill Woods, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as Trustee, appeared before me this day in person and acknowledged that he signed, sealed and delivered

the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this day of, A. D., 1937.

Notary Public.

285 State of Illinois, }
County of Cook. } ss.

I,, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that, personally known to me to be the President of The Granada, Inc., and, personally known to me to be the Secretary of said Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary they signed and delivered the said instrument as President and Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this day of A. D., 1937.

Notary Public.

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EXHIBIT "F."

....., 1937.

City National Bank and Trust Company,
208 South La Salle Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Gentlemen:

Pursuant to the Plan of Reorganization of Granada Apartments, Inc., an Illinois corporation, confirmed by order entered July 14, 1937 in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811" and pursuant to order entered in said

proceedings on October, 1937, the undersigned hereby request you, as Successor Trustee under Trust Deed dated September 1, 1928 from Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, said Trust Deed being recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161996, to execute, acknowledge and deliver to the undersigned an instrument of release of said Trust Deed and any and all supplements thereto and an instrument of satisfaction of the decree of foreclosure entered on December 18, 1936, in the Superior Court of Cook County, Illinois, in proceedings entitled "William Thuma, complainant, vs. Granada Hotel Corporation, a corporation, et al., defendants, No. 519151."

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,

*Constituting the Bondholders'
Protective Committee under De-
posit Agreement dated April 25,
1933,*

By
Duly Authorized.

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EXHIBIT "G."

....., 1937.

Central Republic Trust Company and
Charles H. Albers, as Receiver of
Central Republic Trust Company,
134 South La Salle Street,
Chicago, Illinois.

Re: Granada Apartments, Inc.

Gentlemen:

Pursuant to the Plan of Reorganization of Granada Apartments, Inc., an Illinois corporation, confirmed by order entered July 14, 1937, in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811" and pursuant to order entered in said proceedings on October, 1937, the undersigned hereby request you, as Successor Trustee, under Trust Deed dated

September 1, 1928 from Granada Hotel Corporation, an Illinois corporation, to Chicago Trust Company, as Trustee, said Trust Deed being recorded on October 1, 1928, in the office of the Recorder of Deeds of Cook County, Illinois, as Document 10162332; to execute, acknowledge and deliver to the undersigned an instrument of release of said Trust Deed and any and all supplements thereto.

Charles S. Tuttle,
Albert J. Peterson,
Lewis W. Riddle,
William G. Sturm,
E. A. Kilmer,

*Constituting the Bondholders'
Protective Committee under De-
posit Agreement dated April 25,
1933,*

By

Duly Authorized.

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EXHIBIT "H".

Release.

Know All Men By These Presents that

Whereas, Granada Hotel Corporation, an Illinois corporation, made, executed and delivered its certain Trust Deed dated September 1, 1928 to Chicago Trust Company, as Trustee, to secure its First Mortgage 6% Real Estate Gold Bonds in the principal amount of Five Hundred Twenty-five Thousand Dollars (\$525,000), which said Trust Deed was recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161996; and

Whereas, said Granada Hotel Corporation made, executed and delivered its certain Supplemental Trust Deed dated September 1, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161997; and

Whereas, the title to the property conveyed by said Trust Deed has been acquired by Granada Apartments, Inc., an Illinois corporation; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed on July 14, 1937 by order entered in proceedings in the District Court of the United States, for the Northern District of Illinois, Eastern Division, entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," which said Plan of Re-

organization provided in part that the Successor Trustee under said Trust Deed should execute and deliver an instrument of release thereof and should execute and deliver an instrument of satisfaction of the decree of foreclosure entered on December 18, 1936 in proceedings pending in the Superior Court of Cook County, Illinois, in cause No. 519151; and

Whereas, City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under said Trust Deed, was directed by order entered in said proceedings on July 14, 1937, to execute and deliver said instrument of release of said Trust Deed and instrument of satisfaction of said decree upon written request so to do from Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933, with respect to the said First Mortgage 6% Real Estate Gold Bonds of said Granada Apartments, Inc.; and

Whereas, said order further provided that if within five (5) days from the date of receipt of said written request from the Committee as aforesaid, said City National Bank and Trust Company of Chicago, as said Successor Trustee, shall fail, refuse or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed and an instrument of satisfaction of said decree, then and 289 in that event Carl R. Chindblom be and is appointed

Special Master in said proceeding for the purpose of executing, acknowledging and delivering said release and said satisfaction; and said Carl R. Chindblom, as Special Master, be and is authorized and empowered to execute, acknowledge and deliver such instrument releasing said Trust Deed and satisfying said decree and to do any and all acts necessary or proper in connection therewith; and

Whereas, the said request having been duly given to the City National Bank and Trust Company of Chicago, as Successor Trustee, as provided for in said order, and the said City National Bank and Trust Company of Chicago, as said Successor Trustee, having failed to execute and deliver said release of said Trust Deed and satisfaction of said decree as so directed in said order:

Now, Therefore, for and in consideration of the premises and pursuant to the said Plan of Reorganization and the direction contained in the said order entered in the proceedings above referred to, Carl R. Chindblom, as Special Master, does

(a) Hereby remise, release and quitclaim unto Granada Hotel Corporation, an Illinois corporation, all the right, title, claim or demand whatsoever which City National Bank and Trust Company of Chicago, as Successor Trustee, may have acquired in, through or by a certain Trust Deed bearing the date the 1st day of September, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on the 1st day of October, 1928, as Document 10161996 (and any and all indentures supplemental thereto) in and to the premises described therein, to wit:

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois, together with all improvements thereon and appurtenances thereunto belonging; and

(b) Hereby acknowledges full satisfaction of said decree entered December 18, 1936 in the Superior Court of Cook County, Illinois, in proceedings entitled "William A. Thuma, complainant, vs. Granada Hotel Corporation, a corporation, et al., defendants, No. 519151," and hereby empowers and authorizes the Clerk of the said Superior Court of Cook County, Illinois, to satisfy said decree of record.

290 In Witness Whereof, the said Carl R. Chindblom, as Special Master as aforesaid, has hereunto set his hand and seal this _____ day of _____ A. D., 1937.

_____(Seal)
As Special Master.

State of Illinois, }
County of Cook. } ss.

I, _____, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Carl R. Chindblom, as Special Master, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____ A. D., 1937.

Notary Public.

EXHIBIT "I".

Release.

Know All Men By These Presents that

Whereas, Granada Hotel Corporation, an Illinois corporation, made, executed and delivered its certain Trust Deed dated September 1, 1928, to Chicago Trust Company, as Trustee, to secure its Second Mortgage 6% Real Estate Gold Bonds in the principal amount of Three Hundred Sixty Thousand Dollars (\$360,000), which said Trust Deed was recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10162332; and

Whereas, the title to the property conveyed by said Trust Deed has been subsequently acquired by Granada Apartments, Inc., an Illinois corporation; and

Whereas, a Plan of Reorganization of said Granada Apartments, Inc., was confirmed on July 14, 1937 by order entered in proceedings pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, entitled "In the Matter of Granada Apartments, Inc., a corporation, Debtor, No. 65811," which said Plan of Reorganization provided in part that the Successor Trustee under said Trust Deed should execute and deliver an instrument of release of said Trust Deed; and

Whereas, Charles H. Albers, Receiver of Central Republic Trust Company, as Successor Trustee under said Trust Deed, was directed by said order entered July 14, 1937, to execute and deliver an instrument of release of said Trust Deed upon written request so to do from Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturin and E. A. Kilmer, presently constituting the Protective Committee, acting under a certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of said Granada Apartments, Inc.; and

Whereas, said order entered in said proceedings further provided that if within five (5) days from the date of the receipt of said written request as aforesaid, the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Successor Trustee, shall fail, refuse or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed, then and in that event Carl H. Chindblom be and is appointed Special Master in the said proceedings for the purpose of releasing said Trust

Deed; and the said Carl R. Chindblom be and is authorized and empowered to execute, acknowledge and deliver said instrument of release and to do any and all acts necessary and proper in connection therewith; and

Whereas, the said request having been duly given to the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Successor Trustee, as provided for in said order, and the said Charles H. Albers, as Receiver of Central Republic Trust Company, as said Successor Trustee, having failed to execute, acknowledge and deliver the said release of the said Trust Deed as so directed in said order:

Now, Therefore for and in consideration of the premises and pursuant to the said Plan of Reorganization and the direction contained in the said order entered in said proceedings above referred to, Carl R. Chindblom, as Special Master, does hereby remise, convey, release and quitclaim unto Granada Hotel Corporation an Illinois corporation, all the right, title, claim or demand whatsoever which Charles H. Albers, as Receiver of Central Republic Trust Company, and/or Central Republic Trust Company, as Successor Trustee, may have acquired in, through or by a certain Trust Deed bearing the date the 1st day of September, 1928 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on the 1st day of October, 1928, as Document 10162332 (and any and all indentures supplemental thereto) in and to the premises described therein, to-wit,

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twentyeight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois, together with all improvements thereon and appurtenances thereunto belonging.

In Witness Whereof, the said Carl R. Chindblom, as Special Master as aforesaid, has hereunto set his hand and seal this day of
A. D., 1937.

..... (Seal)
As Special Master.

State of Illinois, }
County of Cook. } ss.

I, _____, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Carl R. Chindblom, as Special Master, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____ A. D., 1937.

Notary Public.

Entered
Oct. 22
1937.

293 And afterwards, to wit, on the 22nd day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

294 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption--65811) * *

ORDER

This cause coming on to be heard upon the petition of the Protective Committee acting under the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor, and the Court being fully advised in the premises, It Is Ordered:

1. That counsel for the Committee be and hereby is authorized to cause to be incorporated a corporation under and pursuant to the provisions of "The Business Corporation Act" of the State of Illinois, the corporate name of which is to be "The Granada, Inc." or such other name as may be selected by counsel for the Committee. Said corporation, when so organized, to be and to constitute the "Reorganized Company" designated in the Plan of Reorganization of Debtor heretofore confirmed herein by order entered July 14, 1937; the articles of incorporation of said Reorganized Company to be substantially in the form attached as Exhibit "A" to said petition, which form be and hereby is approved.

2. That the form of By-Laws of the Reorganized Company attached to said petition as Exhibit "B" be and hereby is approved and the persons who shall constitute the first Board of Directors of the Reorganized Company 295 be and hereby are authorized to adopt said By-Laws in form substantially as set forth in said Exhibit "B" to said petition.

3. That the form of the Trust Agreement attached as Exhibit "C" to said petition be and hereby is amended as follows:

(a) By adding as a first sentence to Section 4 the following:

"The Participation Certificates shall be registered on the books of the Trustees kept for that purpose at the office of the Depositary and the term 'Holder' of a Participation Certificate or of Participation Certificates shall mean when used herein the then registered holder or holders thereof as shall appear from and by the said books of the Trustees."

(b) By adding a fourth paragraph to Section 4 as follows:

"The holders of Participation Certificates shall have the same rights with respect to the examination of the books and records of the Trustees as are provided for shareholders of a corporation organized under the laws of the State of Illinois with respect to the books and records of an Illinois corporation."

(c) By striking the second paragraph of Section 10 and by substituting in lieu thereof the following:

"This Agreement and the trust hereby created may also be terminated at any time by written directions signed by a majority in number of the holders of Participation Certificates then of record and outstanding hereunder, which Participation Certificates must also represent a majority in number of the whole shares in the trust, provided that to be effective such written directions shall fix the date of such termination and shall be filed with the Depositary at least ninety (90) days prior to the date so fixed for such termination."

(d) By adding in paragraph 7 of section 11 immediately following the words "Managing Trustee" the following words: "to superintend the corporate property and affairs":

(e) By adding in paragraph 7 of section 11 immediately following the words "additional reasonable compensation"

the following words and figures: "of not less than two per cent (2%) of the gross annual income of the Corporation".

(f) By adding an additional sentence to paragraph 4 of Section 16 as follows: "Any one of the original Trustees under this Trust Agreement may be, but need not be, appointed as a successor Depositary."

296 That the form of general assignment and assumption attached as Exhibit "E" to said petition be and hereby is amended by adding a new paragraph immediately following paragraph 5, as follows:

"There is reserved and excepted from this assignment the balance on deposit as of the date hereof to the credit of Weightstill Woods, as said Trustee, with Harris Trust and Savings Bank of Chicago, Illinois, and there is further reserved and excepted from this assignment all claims and rights of action (including matters of account) by Weightstill Woods, as said Trustee, against The Arlington, Inc., a corporation, City National Bank and Trust Company of Chicago, a corporation, Indemnity Insurance Company of North America, a corporation, and the County Treasurer of Cook County, Illinois, it being understood and agreed between the parties to this agreement that such claims and rights of action are to be retained by said Weightstill Woods, as said Trustee, for the purpose of continuing the prosecution thereof to final disposition in said above mentioned cause, and are to be subject to the further order of the said Court in the said above mentioned cause."

4. That the form of Trust Agreement attached as Exhibit "C" to said petition as heretofore amended be and hereby is approved, and Clarence N. Boord, William H. Haight and Weightstill Woods be and hereby are designated as the initial Trustees under said Trust Agreement, the said Trust Agreement to be dated October 30, 1937.

5. The form of the following documents attached as Exhibits "D" to "I", inclusive, to the said petition, being as follows:

297 (a) Deed from Trustee in these proceedings to the Reorganized Company;

(b) General Assignment and Assumption by and between Trustee in these proceedings and the Reorganized Company, as amended by paragraph 3 of this order;

(c) Notice from Committee to Successor Trustee under trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor;

(d) Notice from Committee to Successor Trustee under

trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

(e) Release of trust deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor and satisfaction of decree entered December 18, 1936, in the Superior Court of Cook County, Illinois, in Cause No. 519151;

(f) Release of trust deed dated September 1, 1928, securing Second Mortgage 6% Real Estate Gold Bonds of Debtor;

be and hereby is approved.

6. That the respective parties to the said Trust Agreement be and hereby are authorized, empowered and directed to forthwith execute, acknowledge and deliver said Trust Agreement in form substantially as set forth in said Exhibit "C" to said petition, and to do any and all 298 acts necessary and proper to carry out and consummate the matters and things therein contained.

7. That the Committee be and hereby is authorized and directed to forthwith sign the respective notices to the respective Trustees in form substantially as set forth in said respective Exhibits "F" and "G" to said petition, and cause the same to be delivered, and in the event said Successor Trustees or either of them shall fail, neglect or refuse to execute, acknowledge and deliver the said respective instruments referred to in said respective notices within five (5) days after the receipt thereof, then and in that event Carl R. Chindblom be and hereby is, authorized and directed to execute, acknowledge and deliver to the Committee said instruments pursuant to said order entered July 14, 1937, in substantially the respective forms as set forth in said Exhibits "H" and "I" attached to said petition.

8. That Weightstill Woods, as Trustee appointed in these proceedings, be and hereby is authorized, empowered and directed to forthwith execute, acknowledge and deliver to the Reorganized Company said deed in substantially the form as set forth in Exhibit "D" attached to said petition.

9. That Weightstill Woods, as Trustee appointed in these proceedings, be and hereby is authorized, empowered and directed to execute, acknowledge and deliver to the Reorganized Company said instrument of General Assignment and Assumption in substantially the form set forth in said Exhibit "E" attached to said petition as above amended.

10. That the proper officers of the Reorganized Com-

pany upon receipt by it of said instrument of General Assignment and Assumption so executed by the said 299 Weightstill Woods, as Trustee in these proceedings, be and hereby are authorized, empowered and directed, for and on behalf of said Reorganized Company, to execute, acknowledge and deliver said instrument of General Assignment and Assumption and to deliver one executed original thereof to the said Weightstill Woods, as said Trustee in these proceedings.

11. That Weightstill Woods, Trustee in these proceedings, be and hereby is authorized, empowered and directed, contemporaneously with the delivery by him of the said deed to the Reorganized Company, to turn over to the Reorganized Company possession of the property and assets of the Debtor then held by him as said Trustee, and shall thereupon within fifteen (15) days thereafter file herein his final report and account as said Trustee in these proceedings.

12. That City National Bank and Trust Company of Chicago be and hereby is designated as Depositary under said Trust Agreement and as the agency pursuant to Section C of the Plan of Reorganization, to which shall be surrendered the securities and instruments of discharge and satisfaction as therein set forth.

13. That the Trustees under said Trust Agreement be and hereby are authorized and directed to deliver to said Depositary the Participation Certificates issuable under said Trust Agreement, and said Depositary be and hereby is authorized and directed to take such steps as may be necessary to effect the distribution of such Participation Certificates in the number of shares and to the persons entitled thereto, and in the manner as provided in the said Plan of Reorganization but only upon the approval and written direction of the Trustees.

14. That the Reorganized Company be and hereby 300 is authorized and directed to forthwith cause to be issued all of its presently authorized shares of capital stock to the Trustees under said Trust Agreement.

15. That all costs, fees, taxes and expenses incurred in connection with the consummation of the Plan of Reorganization and in connection with the carrying into effect of the matters and things hereinabove set forth shall be paid forthwith, without further order of this Court, by Weightstill Woods, as Trustee in these proceedings, from funds of the Debtor in his possession until such time as he

shall turn over the property and assets of the Debtor now in his possession to the Reorganized Company, and thereafter such costs, fees, taxes and expenses so incurred shall be paid by the Reorganized Company without further order of this Court.

16. That nothing herein shall be construed as limiting or prejudicing the right of City National Bank and Trust Company of Chicago in its individual capacity or as Successor Trustee under Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds of Debtor, to proceed to an ultimate determination of its claim numbered 9 and its petition for settlement of accounts heretofore filed herein and to have the amount ultimately found due thereon paid pursuant to the Plan of Reorganization; and nothing herein contained shall be construed as an adjudication or decision of any issues raised by the answer and counterclaim by Weightstill Woods, Trustee in these proceedings, now pending to said claim numbered 9 and petition by City National Bank and Trust Company of Chicago for a settlement of its accounts.

17. That this Court reserve jurisdiction with respect to the matters and things herein contained and with respect to all matters and things hereafter arising in connection with the consummation of the Plan of Reorganization not heretofore determined, and for the purpose of amplifying, extending, modifying or amending this order without further notice.

Enter:

Barnes,
Judge.

Dated October 22, 1937.

302 And afterwards, to wit, on the 12th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
Oct. 12,
1937.

303 IN THE DISTRICT COURT OF THE UNITED STATES.

Tuesday, October 12, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.
* * (Caption—65811) * *

This day again come the parties by their solicitors and the Court having heard all the evidence adduced said cause is taken under advisement by the Court Trustee to file Brief and submit findings of fact and conclusions of law within 15 days from this date. Claimant to file brief and submit findings of fact and conclusions of law within 30 days from this date and Trustee to file reply brief within 40 days from this date.

Entered
Oct. 21,
1937.

304 And afterwards, to wit, on the 21st day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

305 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

ORDER ON MOTION BY COURT TRUSTEE TO CONSOLIDATE CERTAIN HEARINGS, RE CITY NATIONAL BANK AND TRUST COMPANY.

This cause coming on to be heard regularly upon the trial call of this Court and all counsel of record being present and represented in open Court, and the Court Trustee having presented orally and in writing filed in this cause his motion to obtain this order and other counsel having expressed their views and the Court being fully advised in the premises:

It Is Ordered that all evidence taken before the Referee and the application and petition made to the Court, for allowance of fees and expenses to the Bondholders' Committee for the services claimed to have been rendered to it by the City National Bank and Trust Company as depositary and for facilities furnished by the City National Bank and Trust Company for Committee use and for services of counsel to the Committee or to City National Bank and

Trust Company be and hereby are consolidated with the accounting proceedings now pending for settlement of accounts between City National Bank and Trust Company and Debtor Estate.

It Is Further Ordered that all application for such administrative allowance and all evidence presented pertaining thereto shall be considered as part of the hearing 306 which has been had in open Court, to be included and considered in preparing the findings and the briefs to be presented to the Court, and to have disposition as part of said accounting proceedings now pending in this Court.

Enter:

Dated: October 21, 1937.

Barnes,
District Judge.

362 And afterwards, to wit, on the 25th day of October, A. D. 1937, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Filed
Oct. 25,
1937.

Memorandum.

363 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811.) * *

MEMORANDUM.

This matter came on to be heard on the applications of various parties in interest for the allowance of fees and expenses to be charged as expenses of administration.

Mr. B. W. Rosenstone was appointed special trial attorney for the trustee in certain specific matters and asks an allowance of \$1000 for the services rendered by him. The sum of \$800 may be allowed.

Mr. Weightstill Woods, the trustee appointed by the court, asks a reasonable allowance for his services as trustee other than for his services in certain specific matters which are enumerated in his petition. The sum of \$3500 may be allowed.

Mr. Fred C. Myers asks an allowance of \$750 for disbursements and \$5000 for services rendered by him in three cases as follows:

- Granada Hotel Corp., a Debtor, #2613-Danville;
- Granada Apts., Inc., a Debtor, #2701-Danville;
- Granada Apts., Inc., a Debtor, #3008-Danville.

Mr. Myers states that he was appointed trustee by the District Court for the Eastern District of Illinois in the first of these cases, being No. 2613-D, and that he rendered services in the other two cases. The first of the three cases above mentioned was dismissed, at petitioners' costs, after going to the Supreme Court. The court cannot make an allowance in this case for services rendered in that case. The other two cases referred to by the claimant are the cases that were consolidated in this court and which are now before the court. The court cannot find that any 364 orders of appointment were made in either of these cases at any time by anyone. Furthermore, it does not appear to the court that claimant's services were of value to the estate now before the court. Accordingly, there will be no allowance.

Mr. Samuel Micon has filed two petitions for fees and disbursements. In each of said petitions he asks \$3000 for services and \$25 for disbursements. There is some difference in the two petitions in respect of a claim for \$2500, part and parcel of the aforesaid claim of \$3000. It seems that Mr. Micon, the claimant, represented the complainant in a creditors' suit in the State court and that in said creditors' suit he procured the appointment of a receiver for the debtor and that the resulting equity receivership was used as a basis for the jurisdiction of this court in one of the cases now pending before this court. As the court remembers the Illinois law, there is no warrant thereunder for any allowance to the complainant in an equity receivership case for solicitor's fees. As a matter of fact, under the Illinois law, solicitor's fees are only allowed to parties were they are expressly provided for by statute. Accordingly, there is no justification for an allowance to Mr. Micon for services rendered by him in the State Court. As regards the services which he may have rendered in this court, the court understood that such services were being rendered for his client and not for the court. The court cannot say that Mr. Micon's services were of value to the estate. Accordingly, there will be no allowance to him either for services or for disbursements.

Mr. David H. Kraft asks an allowance of \$100 for services rendered by him on behalf of his brother, Mr. Maurice M. Kraft, who was the holder of a \$500 bond. The court cannot say that Mr. Kraft's services were of benefit to the estate. Accordingly, there cannot be any allowance of fees. This claim will be disallowed.

365 Messrs. Gilbert F. Wagner, Jay R. Lasky and David N. Greenberg ask an allowance of \$4500 for their services as attorneys for the petitioning creditors in one of the cases which was consolidated to form the case now pending before the court. They also ask an allowance of \$135 for their disbursements. Because of the loss which the bondholders are bound to take in this case, the claim of counsel must be drastically cut. There may be an allowance of \$750 for fees and \$135 for disbursements.

Messrs. Mort D. and Frank Goldberg ask an allowance of \$6500 for services rendered by them as attorneys for the petitioning debtor in one of the proceedings which was consolidated to form the proceeding now before the court. They also ask \$174.55 for their disbursements. Because bondholders will suffer substantial losses in this case, this claim will have to be drastically cut. The sum of \$750 for services will be allowed and the item for disbursements may be allowed in full.

Mr. Carl R. Chindblom has asked an allowance of \$185 for services as special master on two references and the sum of \$50 for expenses on said two references. Said items, in the total sum of \$235, may be allowed. The court reporter, Mr. William J. Snyder, who reported this proceeding before the special master, asks an allowance for \$150.25 for his attendance and transcript. This item may be allowed.

Consideration of the petition of the bondholders' committee for the allowance of fees and expenses and the petition of Messrs. Defrees, Buckingham, Jones & Hoffman for allowance of counsel fees is postponed to await the coming in of briefs which have been directed to be filed.

An appropriate order may be made at the opening of court on Wednesday, October 27, 1937, without any further notice than this.

Barnes,
Judge.

October 25, 1937.

366 And afterwards, to wit, on the 30th day of December,

A. D. 1937, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
Dec. 30,
1937.

367 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—65811.)

ORDER.

This matter coming on to be heard upon the motion of Defrees, Buckingham, Jones & Hoffman, attorneys for City National Bank and Trust Company of Chicago, as Trustee, upon due notice to Weightstill Woods, Trustee in Bankruptcy;

It Is Ordered that the certificate of evidence and transcript of proceedings in the matter of the petition, report and account of City National Bank and Trust Company of Chicago, as Trustee, the answer thereto and counterclaim of Weightstill Woods, Trustee in Bankruptcy, and in the matter of the petition of Weightstill Woods, Trustee in Bankruptcy, in respect of services to The Arlington, Inc., and all matters consolidated by orders 10/21/37 and 12/10/37, and the answer thereto of The Arlington, Inc.,—now submitted in open court—consisting of three volumes, be and it is hereby certified and approved as the full and correct certificate of evidence and transcript of proceedings of the hearings on the matters aforesaid;

And It Is Further Ordered that the same be forthwith filed with the Clerk of this Court and made a part of the record in the above entitled cause.

Enter:
Barnes,
Judge.

December 30th, 1937.

184 And on, to wit, the 30th day of December, 1937, came Weightstill Woods, Trustee, and filed in the Clerk's office of said Court his certain Notice in words and figures following, to wit:

185 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811.) * *

Filed
Dec. 30,
1937.

NOTICE

To:

Defrees, Buckingham, Jones & Hoffman,
105 South La Salle Street,
Chicago, Illinois.

Please take notice that on Thursday, December 30, 1937 at the opening of Court in the forenoon, the undersigned will attend before said Court, the Honorable John Peter Barnes, Judge presiding, at his usual Courtroom in the United States Courthouse at Chicago, and make motion for a rule that the Bondholders Committee and its counsel immediately file for record, the releases of mortgages and liens mentioned in the Plan, and orders July 14th and October 22, 1937 in this proceeding, and that they proceed forthwith for clearance of objections mentioned in the Opinion of Title which they have had since November 12, 1937.

And also make motion for approval by the Court and filing of three (3) volumes of evidence and one (1) volume of pleadings, including the proceedings December 3rd and 10th inclusive, as the complete record in the accounting proceedings between Debtor estate and City National Bank & Trust Company and associate litigants.

Weightstill Woods,
Weightstill Woods,
Federal Trustee.

Received a Copy of the Above and foregoing notice this 29th day of December A. D. 1937.

Defrees, Buckingham, Jones & Hoffman,

R. L.

377 And on, to wit, the 2nd day of April, 1938, there was filed in the Clerk's office of said Court a certain Statement of Receipts and Disbursements in words and figures following, to wit:

Filed 378
Apr. 2,
1938.

Granada Apartments Inc. Debtor
Weightstill Woods—Temporary Trustee
525 W. Arlington St.
Chicago, Ill.

Statement of Cash Receipts and Disbursements
May 17th, 1937 to March 31st, 1938

Receipts:

City National Bank—Former Trustee Remittance.....	\$	777.40	
Accounts Transferred.....		2,878.54	
Rental—Rooms.....		29,887.97	
Heat, Water and Refrigeration—Hotels.....		6,641.68	
Guest Services:			
Telephone & Telegraph—Receipts.....	\$1,758.56		
Disbursements.....	1,658.89	99.67	
Valet Service—			
Receipts.....	\$ 630.75		
Disbursements.....	.539.60	91.15	
Laundry—			
Receipts.....	\$ 465.01		
Disbursements.....	331.94	133.07	
Newspapers—			
Receipts.....	\$ 228.69		
Disbursements.....	160.21	68.48	

Miscellaneous Income:

Telephone Refund.....	\$	30.75	
Recovery Delinquent accounts and notes.....		120.00	
Sale of old and waste material.....		163.85	
Insurance—fire loss—Canopy.....		60.00	
Commission—Sale of Tickets.....		1.25	375.85

Total Receipts.....\$40,949.81

Deduct: Disbursements per Schedule.....40,192.58

Balance in hands of Trustee.....\$ 757.23

On Deposit—Harris Trust & Savings Bank.....\$ 757.23

Statement.

719

379

Disbursements:

General and Administrative

Salaries.....	\$2,378.67	
Trustee Fees.....	3,500.00	
Promotion and Entertainment.....	349.64	
Topics—Disbursements.....	\$232.38	
Receipts.....	170.73	61.65

Stationery and Supplies.....	58.45	
Social Security Tax O.A.B.....	109.92	
Unemployment Insurance.....	230.40	
Insurance.....	1,904.07	
Taxes—Real Estate 1936.....	4,846.87	
—Personal Property 1931 and 1936.....	1,000.00	
Collection Expense.....	96.67	
Auditing.....	500.00	
Exchange and Bank Charges.....	19.93	
Miscellaneous Expense.....	65.66	\$15,151.93

Rooms Expense:

Wages.....	\$5,238.16	
Supplies and Expense.....	25.52	5,263.68

Heat, Water and Refrigeration:

Wages.....	\$1,210.00	
Fuel, oil and refrigeration gas.....	922.78	
Electricity.....	2,789.36	
Water.....	1,131.18	
Ash and rubbish removed.....	50.00	6,103.32

Operating Expense:

House Laundry and Cleaning.....	\$1,386.67	
Gas.....	225.27	
Patrol.....	15.00	
Uniforms.....	31.14	
Supplies.....	437.18	
City Inspection Fees.....	20.00	
Association Dues.....	42.68	
Advertising Space.....	22.29	
Extermination Service.....	14.15	2,194.35

Repairs and Maintenance:

General		
Wages.....	\$522.50	522.50

Forward.....	\$ 522.50	\$23,713.28
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380

Repairs & Maintenance—Continued		
Forward.....	\$ 522.50	\$28,713.28
Decorating:		
Wages.....	\$1,087.50	
Material & Supplies.....	157.50	1,245.00
Furniture:		
Wages.....	\$ 533.50	
Material, Supplies and Expense.....	504.62	1,038.12
Household Equipment.....		1,228.96
Linens.....		378.06
Building:		
Repairs and Supplies Expense.....		938.74
Plant:		
Machinery Replacements.....		123.54
Total Repairs & Maintenance.....		\$ 5,474.92
Total Operating Disbursements.....		\$34,188.20
Other Disbursements:		
Legal Expense—Attorney		
Fees in reorganization proceedings.....		\$ 2,194.80
Legal Expense in suit vs.		
City National Bank:		
Attorneys Fees.....	\$ 800.00	
Special Masters Fee.....	35.00	
Court Reporters Fees.....	741.45	
Engineering Survey.....	400.00	
Furniture appraisal fee.....	24.50	
Witness fee.....	50.00	
Blueprints and Photos.....	38.10	
Printing.....	337.70	
Legal Notice Publication.....	370.50	\$ 2,797.25
Organization Expense—New Corporation:		
Filing Fee.....	\$ 28.00	
Franchise Tax.....	421.00	
Corporation Records.....	11.33	
Participation Certificates.....	52.00	\$ 512.33
House Fund Transferred to New Corporation.....		\$ 500.00
Total Disbursements.....		\$40,192.58

Order.

721

386 And afterwards, to wit, on the 24th day of May, A. D. 1938, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
May 24,
1938.

387 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811.) * *

ORDER.

The report by the court trustee dated and filed May 24, 1938 is presented to the court for consideration and approval.

The court finds that no objections have been made to the accounts of the court trustee which were approved by order of this court April 4, 1938; and that said accounts stand confirmed.

It Is Ordered that the maximum penalty or liability on the bond of the court trustee be reduced to the sum of Five Thousand and no/100 Dollars, effective from and after May 17, 1938.

It Is Further Ordered that Weightstill Woods continue as court trustee until after disposition of all pending litigation to which he is party in this Court.

Enter:

Barnes,

United States District Judge.

Dated: May 24, 1938.

307 And on, to wit, the 30th day of September, 1938, came the City Natl. Bank & Trust Co. of Chicago et al. by their attorneys and filed in the Clerk's office of said Court their certain Suggestions and Objections in words and figures following, to wit:

Filed
Sept. 30,
1938.

308 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—65811) * * *

SUGGESTIONS AND OBJECTIONS OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, CHARLES S. TUTTLE, ET AL., AND DEFREES, BUCKINGHAM, JONES & HOFFMAN TO THE DECREE, FINDINGS OF FACT, AND CONCLUSIONS OF LAW DRAFTED BY THE COURT TRUSTEE AND PRESENTED TO THE COURT SEPTEMBER 24, 1938.

Now come the above parties, by Defrees, Buckingham, Jones & Hoffman, attorneys, and make the following suggestions and objections in respect of the findings of fact, conclusions of law, and decree proposed by the court trustee and presented to the court September 24, 1938:

The Findings of Fact.

In general:—

1. They are argumentative.
2. They do not purport to be, and are not, but should be, findings of ultimate facts.
3. The instances in which facts are alleged, either without support of any evidence of record or in direct contradiction of the only evidence of record, are numerous and substantial, so as to make it seem that the court trustee is trying to tell his own story rather than that told by the record.

309 The Fact Findings as Related to the Court's Oral Opinion.

1. At the conclusion of its oral opinion the court stated "Counsel for the court trustee may prepare, and on notice present, findings of fact and conclusions of law, and a decree consistent with what I have stated."

Findings of fact, where required, are intended to evidence the ultimate fact conclusions arrived at by the court from the record. They may not properly be mere statements of evidentiary facts on or off the record. The findings submitted by the court trustee not only violate this

rule but defeat the very purpose and objective of fact findings as that term is used in the law,—that is to say, it is not possible to look at the proposed fact findings and to discover what the ultimate findings of the court are.

2. The findings are not consistent with the oral opinion of the court because

(a) The court did not make; and its oral opinion is inconsistent with, the proposed finding numbered 53.

(b) The court in its oral opinion made no such finding as is proposed at number 54, nor is there any basis in fact or in law for such finding. Indeed, there hasn't even been a pleading or hearing of any kind to support such finding or even to suggest that such relief was sought. There has been no showing anywhere that the Continental Illinois National Bank and Trust Company is not entitled to be paid. Indeed, the court has ordered the court trustee to pay it.

(c) At number 55 the court trustee proposes that the court find that all matters stated in his answer and counterclaim are fully established by evidence in the record and that he is entitled to full relief on account thereof, 310 also that all items claimed as credits by City National should be disallowed:

Not only did the court make no such finding, but it expressly found to the contrary when it said in its oral opinion:

"I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as fees and disbursements. * * * Now, upon consideration, I have concluded that certainly the bank will not be harmed if I set off the claims which the court trustee has against it, against its claims for further fees and allowances and the further fees and allowances of the bondholders' committee, the trustee's officers and employees who act as a committee."

Thus in its opinion the court clearly fixed the limit of liability at an amount equal to the aggregate of the fees allowed. This is quite at variance with the court trustee's proposed finding numbered 55.

(d) The remarks contained in (c) last above apply with the same force to the court trustee's proposed finding number 56, and, in addition thereto, we note in respect of 56:

(1) The court did not in its opinion tax any costs

against the City National, nor are the items mentioned by the court trustee at Section 1 of paragraph 56 taxable costs.

(2) It is not possible to discuss in detail items 2 to 12 under proposed fact finding 56 without going into the entire case or without repeating specific objections hereinafter made, but in relation to the court's oral opinion we here point out that the court did not so find. As to item 3, for example, the court said nothing whatsoever about it. As to the item of \$13,000 under number 4, the court expressly stated that it was true that the City National did not issue the receiver's certificate, and that it was not the receiver, and was not trustee, at the time of the issuance of the receiver's certificate. Take item 5, management fee of trustee in possession,—the court said nothing whatever about it, nor was there ever any showing that the amount charged was unreasonable. In short, the court in its oral opinion made no finding in reference to any of these items, and there is either no evidence at all to support them or the preponderance of the evidence is otherwise.

(e) In proposed finding number 57 it is stated that "triple damages per statute" are authorized, etc. A mere reading of the transcript of the court's oral opinion will demonstrate to anybody that this is not a finding "consistent with what I have stated."

(f) The court trustee's suggested finding at number 58 is shuffling and evasive and a substantial distortion, at variance with the court's oral opinion. The court never found that the City National was not the lawful trustee. Indeed, it expressly recognized it as trustee for all purposes of reorganization, such as the release of the first mortgage, etc. And of course the court did not find that if the City National were a lawful trustee, then it should receive for its services not exceeding \$500. As to the committee, the court expressly stated in its opinion:

"I think the maximum fee that they could be allowed for their service would be \$200 apiece, or \$1,000. Assuming that all of this out-of-pocket expense of \$2,285.21 is justified, assuming that the depository is entitled to \$1,150, the maximum that the Committee could be entitled to would be \$4,157.24. * * *

312 The best I can make out of it, the most that could go to the attorneys would be \$4,500, \$4,157.24 to the committee, and \$500 to the trustee."

So that the court did not find that the committee has not justified its claim for out-of-pocket expenses nor that the demands of respondents all are unreasonable and inequitable.

The fact is that the court allowed counsel \$4,500, the depository \$4,157.24, and the City National, as trustee, \$500, and then said

"I have concluded that * * * if I set off the claims which the court trustee has against it, against its claims for further fees and allowances and the further fees and allowances of the bondholders' committee" the bank will not be harmed. "The trustee will not be paid any further moneys; the bondholders' committee will not be paid any moneys; and if the trustee desires its counsel to have any further moneys it will have to compensate its counsel."

(g) As to fact finding number 60—the court in its opinion said nothing about "recoupment," nor is the doctrine of recoupment applicable to the situation at bar in so far as the court trustee is concerned.

In a general way, there is a basic objection which applies particularly to proposed findings 53 to 60, inclusive, and that is that the court in its oral opinion expressly refused to make any such findings. As noted above, the court stated

"I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as its fees and disbursements. That was one reason I put these briefs away and let the matter rest for two or three months. I don't want to do that bank any injustice, but I think it has done that property some injustice. Now, upon consideration, I have concluded that certainly the bank will not be harmed if I set off the claims which the court trustee has against it, against its claims for further fees and allowances," etc.

313. The items listed by the court trustee in finding 56 exceed \$114,000. The ceiling on the fees and expenses of the mortgage trustee, the committee and their counsel is, in the aggregate, about \$9,200. It is plain that the court did not have in mind any such finding as proposed by the court trustee at number 56. Rather the court's conclusion seems to be that the bank "has done that property some injustice" by reason of which it is to be de-

prived of fees and expenses and of reimbursement for its obligations to counsel. In this connection, if the court will refer to the last page of the draft of decree submitted by court trustee, it will find that the court trustee expressly excepts to paragraph 59 of the findings of fact. Referring to 59, the court will see that after finding due the court trustee all of the items mentioned in paragraph 57 the court nevertheless says "that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other," no cash recovery to be allowed or made to the court trustee by virtue of the findings.

If the court trustee can get the court to make the findings suggested at number 56, expressly contrary to what the court has already held in its oral opinion, then of course the court trustee has good grounds for the exception which he notes at the foot of the decree to paragraph 59 of the fact findings. The point is that if the court on the record found due the court trustee \$114,000, as mentioned in finding 56, and then three times that amount as triple damages, as mentioned in paragraph 57, and then sought to relieve the bank of liability for payment except to the extent of \$9,200, its decree would be patently erroneous. It is plain that the court made no such
314 palpable error in its oral opinion, but the court trustee now asks it to do so by adopting the findings in this form.

Specific Objections to the Proposed Findings of Fact.

The numbers following relate to findings proposed by the court trustee bearing the same numbers, respectively.

2. We object to the last words "under Chapters II and X of amended law."

The reorganization was fully consummated before the effective date of the Chandler Act, and the court trustee's present powers are merely those reserved by former orders of court and are specifically to conclude the pending litigation.

3. We object to the last words "upon written request of the bondholders' committee."

The City National was directed by court order to release the mortgage.

4. We object to the language commencing in the second to the last line reading "has been since that date authorized to prosecute."

The court trustee brought the litigation without any instruction or order of court but on his own initiative.

6. We object to the word "voluntarily," starting in the first line.

The mortgage trustee was compelled by law to account to the Federal Court.

8. We object to the use of the word "these" in the last line.

The court ordered the court trustee to submit findings consistent with his oral opinion—not to submit "these" findings.

315 10. We object to the words "bondholders' committee and their counsel," starting in the first line.

The account and claim to which the court trustee's counterclaim was filed was put in by the City National, not by the committee, and accordingly we object also to the use of the word "they" starting in the fourth line of this finding and to the word "respondents."

We further object to the finding reading "The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide."

Under the Chandler Act the district judge is vested with no power to make any chapter save Chapter X applicable or inapplicable. Chapter X relates to corporate reorganizations. The reorganization here was consummated long before the adoption of the Chandler Act, and hence Chapter X is not applicable. As to Chapter II, its applicability is not to be determined by order of the district judge, nor is it applicable to this case, for the rights and powers of the parties and those of the court are to be determined by the law in effect at the time the trial was had. This trial was concluded before the effective date of the Chandler Act in reference to the law as it then was.

11. We object to the phrase "proposed to build" and to the sentence "This real estate department was in charge of three men named Cody, Lewis H. Riddle and other persons."

There is no such evidence of record.

316 12. (a) The words "to serve" in the second line are objected to as too general.

(b) The sentence "Mateer owned the corporate stock" is objected to.

There is no such evidence of record, and it is not the fact that Mateer owned the corporate stock.

13. We object to the words "and was operating as a business unit" in the fourth line.

There is no evidence of record that the properties were operated as a business unit and it is not the fact. The Granada lobby was used as a sort of social center.

14. (a) We object to the statement "there was a failure by Chicago Trust Company and its counsel to see that the furniture and fixtures in the Granada were paid for out of the proceeds of that loan."

There is no evidence of record and it is not the fact that counsel had anything to do, legally or otherwise, with the security for the loan, with the prospectus, or with the payment of the proceeds of the loan. Nor is there any evidence and it is not the fact that there was any plan, agreement or intention to pay for the furniture "out of the proceeds of the loan." The bare fact is that the underwriter did not procure a prior lien on the furniture as further security for the payment of the bonds.

(b) We object also to the statement "They charged Granada Hotel Corporation more than One Hundred Twenty Thousand Dollar (\$120,000). What became of that much furniture is not shown by the record. It is probable the other hotels received part of it."

There is no evidence whatsoever to support either of these statements.

317 15. We object to the statement "By this time the

Codys and Louis W. Riddle and associates had separated from Chicago Trust Company and had organized the Cody Trust Company as a new house of issue. There was need to protect Chicago Trust Company and all persons who had participated by placing their names in the prospectus to the bondholders in 1924."

There is no evidence in the record to support either of those statements.

16. (a) We object to the statement "The increase over 1924 was about Three Hundred Thousand Dollars (\$300,000). The respondents have not shown what became of

that additional money. * * * What became of the additional Three Hundred Thousand Dollars (\$300,000) due from and charged to the bankers is not shown."

The new first mortgage was not larger but was smaller by \$25,000, and there is no evidence that the increase over 1924 was \$300,000 as to the combined first and second mortgages. Indeed there is no evidence as to the amounts outstanding under the old first and second mortgages which were refunded. What became of the money is a question which was not in issue in these proceedings—hence no showing. The claims filed in the first and second mortgage bonds stand allowed.

(b) We object to the statement "Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

"Failure to pay" implies an obligation under some agreement. There was no agreement so to do.

318 17. We object to the words at the conclusion of the paragraph, reading "and finally \$40,000 to stay the sale."

The evidence shows that the \$40,000 bond was an appeal bond and not an injunction bond, and it further shows that the injunction which had been dissolved in and by the decree appealed from had not been reinstated pending appeal.

18. We object to the words commencing in the ninth line "which led to a Master's Report of evidence."

There was no master's report on the suggestion of damages.

19. (a) We object to that part of the second sentence which reads "To protect the bankers, another employee or nominee of Cody Trust named Thuma, was now used."

There is no evidence that Thuma was "another employee or nominee of Cody Trust Company."

(b) We object to the statement at the conclusion of the finding "A proper theory and apt argument would have led to the opposite result."

Not only is the statement impertinent but the theory on which the fixture litigation was conducted in the Appellate and Supreme Courts does not appear of record and is unknown to the court since neither the briefs nor any statement of the contents thereof were offered or received in evidence.

20. (a) We object to the statement starting in the fifth line and reading "by direction of the bankers."

There is no evidence that "the bankers", whoever they were, had anything to do with it.

319 (b) We object to the statement "That Company was not a business firm. It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The bankers made their own collateral."

There is no such evidence of record, nor is it the fact.

21. We object to the words at the end of the finding "to take over its deposit banking business."

There is no such evidence.

22. (a) We object to the opening statement "As a new hedge against the failure to pay off Pick claims out of the 1924 trust deed."

There is no evidence that that was the purpose of the refunding loan, nor could the refunding loan serve such purpose, and there certainly is no evidence that it was a "hedge."

(b) We object to the statement "the Cody Trust Company and their Attorney, in the spring of 1929 organized a new Illinois corporation."

We were not attorneys for Cody Trust Company, and there is no such evidence of record.

(c) We object to the sentence "This assumption also had the effect to change Wenstrand and others who have signed said bonds, from makers to sureties upon the 1928 first mortgage issue."

Wenstrand was, and still is, primarily liable for the payment of the bonds, and it is so recited in the approved plan in this proceeding.

23. (a) We object to the statement "Mr. Malter definitely passed out of the picture," and to the following statement "This corporation never had an independent will of its own."

There is no evidence to support either of these statements and they are not true as to the officers of Graceland Apartments, Inc. The fact is, and the record shows, that they had no connection whatsoever with Cody Trust Company, nor were they its dummies. The list of stockholders in the possession of the court trustee shows that these officers were from the beginning and

still are holders in their own right of a substantial amount of the stock of Granada Apartments, Inc.

(b) We object to the statement "An agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

There is no evidence of record of any such agreement, and there was no such agreement.

(c) We object to the statement "the Chicago Title & Trust Company was appointed as nominal receiver, but the order provided it should not disturb the Cody management, then in control of Granada Hotel and revenues."

The Title Company was not appointed as "nominal receiver. It was appointed receiver and acted as such. Moreover, the order did not provide that it should not disturb the "Cody" management. It provided that it was not to disturb the "existing" management, and there is no evidence of record to show what the existing management was at that time.

(d) We object to the statement "an agreement was negotiated by Edward Ball, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys.

This agreement was not negotiated by Ball, and there is no evidence of record that it was. The evidence is that

the agreement was negotiated by the attorneys for 321 Central Republic Trust Company. Moreover, Mr. Ball

was not an employee or nominee of either the Cody Trust Company or the City National in 1933, when this agreement was negotiated. He did not become the agent of the City National or its predecessor, the Central Republic Trust Company, nor did he become the nominee of Cody Trust Company until at and after the time that the receiver surrendered possession to the mortgage trustee, which was some time after the negotiation of the agreement here spoken of.

(e) We object to the statement "Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

Technically, International and Industrial Securities Corporation sold the absolute property in these corporeal chat-

tels. In plainer English, they sold the equipment which they owned and they sold it not to Central Republic Trust Company but to the receiver.

(f) We object also to the statement "to carry out this agreement."

The money was spent not by authority of any agreement but on authority of court order, which is in evidence.

24. (a) We object to the statement "A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered," etc.

There was a stipulation, but there was a petition too. It is in evidence.

322 (b) We object to the statement "Services of said attorneys were performed to protect persons other than the bondholders."

The \$2,000 paid to this firm was for services in fixture litigation in the Superior Court, the Appellate Court, and the Supreme Court, the purpose of which was to keep in the building the alleged fixture items.

(c) We object to the statement "All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders."

Both Pick and the holder of the receiver's certificate of indebtedness had a prior lien on the property.

25. (a) We object to the implication that Central Republic, City National, or its attorneys knew that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds.

There is no evidence that that was known to Central Republic, City National, or its attorneys.—We further object to the statement in this regard contained in this finding on the ground that it is wholly immaterial.

(b) We object to the statement that the Superior Court judge was not told that Wenstrand and others signed the 1928 refinancing bonds.

Obviously, proceedings for foreclosure were pending in that court and the facts were of record.

(c) We object to the statement "The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof."

We had nothing to do with that trial and it is a separate matter in no way binding upon the parties here.

323 26. (a) We object to the statement "whereby the officers of Chicago Trust Company, Cody Trust Com-

pany and persons above mentioned, all were guilty of offenses upon which statutes of limitations had not then become effective."

There is no showing of offenses and no showing as to when the statute of limitations became effective.

(b) We object to the statement "that these facts were well known to City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

There is no such evidence.

(c) We object to the statement "The outstanding and main purpose of this conspiracy was to allow statutes of limitations to run and to use bondholders' money to bring about that result. By their efforts the bondholders' money paid a second time for furniture at Granada."

Quite patently there was nothing in the action taken which had anything to do with the running of statute of limitations. Equally clear is it that the bondholders' money did not pay for the furniture a second time.

28. (a) We object to the statement "The money misappropriated to buy furniture a second time and to pay to I.I.C.N.A."

There was no money misappropriated and the furniture was not paid for a second time.

(b) We object to the statement that "Creditors were hindered, delayed and defrauded."

There is no such evidence.

(c) We object to the statement "Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed."

There is no such evidence.

324. (d) We object to the words in the last sentence of the finding "Respondent and Indenture Trustee," if by those terms is meant City National Bank and Trust Company or the committee.

29. We object to the sentence "Plainly the cross bill was filed for that purpose."

It plainly was not. It was filed for affirmative foreclosure of the entire issue, default having occurred. The cross-bill contributed in no way to the issuance of the receiver's certificate. The trustee was already a party to the litigation and did not become such by the filing of a cross-bill.

30. We object to the entire finding here. It is really a

conclusion of law and an erroneous one at that. In so far as it states facts, we object to the statement.

(a) "All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

There is no such evidence and Granada Hotel Corporation was a party to the case long before the cross-bill was filed.

(b) "All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

It is common knowledge that foreclosure proceedings are proceedings in rem and are brought to enforce a lien. They are not barred because the maker corporation is defunct. Moreover, Granada Apartments, Inc., had assumed payment of the first mortgage indebtedness and was a party defendant and cross-defendant. It was not defunct.

325 (c) We object to the statement "By the decree December 18, 1936 the presiding judge of the Superior Court refused to allow or consider any accounting of the funds."

The decree in evidence shows that the court did not undertake to pass on the plaintiff's account as though the plaintiff were an officer of the court, but the decree does state the account as between the parties to the litigation and finds what remains due the plaintiff trustee after allowing all credit on account of rents collected. In other words, the accounting was between the parties and not between the court and any officer thereof.

31. It is not true that respondents stress the contention that Attorney Shanner did not participate in the proceeding in the Superior Court. In fact we made no contention one way or the other.

32. (a) It is untrue that nominees of Cody Trust Company physically and actually operated the property until January, 1934. There is no such evidence anywhere in the record.

(b) We object to the statement "At that time school tax warrants owned by Granada needlessly were sold at a discount."

There is no evidence of this in the record.

(c) We object to the statement "Superior Court was not informed of important facts which show that Company" (meaning Chicago Title and Trust Company, re-

ceiver) "was not entitled to any fees. City National and attorneys knew the facts but made no objection."

There were no facts to show that the receiver was not entitled to fees, nor did City National or its attorneys know of any such facts and hence had no occasion to make objection.

326 (d) We object to the implications arising from the following statements, "The record shows that more than \$10,000 Granada money was held by City National for a long time and not applied to taxes or other debts. Everybody was taken care of except the bondholders."

The reason for the retention of the \$10,000 of Granada money appears affirmatively of record. The testimony is undisputed, and it was held and used for the benefit of the bondholders. Moreover, City National did not become trustee until 1935, long after the money so retained was spent and long after the receiver's final report and account was approved.

33. (a) We object to the statement that City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter as to which the Central Republic Trust Company was nominal Trustee.

There is no evidence anywhere of record that City National "furnished the personnel and service on the trusts" (of Central Republic). The record is "that it serviced Central Republic trusts." It furnished facilities and personnel for the use of the Committee.

(b) We object to the statement "From October, 1932 the City National assumed and exercised real control over Granada affairs, whereby it had the duty to require Chicago Title and Trust Company and others to account."

Central Republic Trust Company was the trustee until its resignation, and its officers had full responsibility and control. The court's finding in its oral opinion that City National acted as agent of Central Republic Trust Company does not make City National the trustee. Cen-
327 tral Republic was still the trustee and accountable for its acts as such and those of its agents.

(c) We object to the statement "Under the Illinois law at that time no such question of title could be brought before the court in a foreclosure proceeding. These acts were void."

This is not a finding of fact. It is a conclusion of law and an erroneous one.

34. (a). We object to the statement "This Bondholders Committee had no will of its own. It had been organized in April, 1933 by and among minor officers, employees and nominees of City National Bank and Trust Company."

This statement is directly contrary to the evidence of record.

(b) We object to the statement "From that time until the court trustee in these proceeds took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession operated the Granada Hotel property."

This statement is patently untrue. City National did not take possession until January 4, 1935, nor did it claim to be in possession until then.

(c) We object to the statement "City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another."

Nothing intricate about the system except to the counterclaimant, who does not understand that the books were those of the mortgagee in possession and thus necessarily kept at its offices. He thinks that the mortgagee in possession should have been keeping up the books of the hotel corporation. Funds were transferred from one account to another. This was to earmark them for the

benefit of the people they belonged to, so that they would not be disbursed for general purposes,—an entirely proper operation.

(d) We object to the statement "City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation."

Three of the five members of the Committee were, and are, in no way connected with the bank. All litigation which was participated in was necessary and unavoidable.

We further object to the implication that the litigation was engaged in in order to keep the trustee in possession of the property. Under the Illinois law it is well known that a mortgagee may stay in possession until the debt is paid. The litigation had to do in the one case with keeping indispensable equipment and, in the other, with avoiding the hopelessly unmerchantable title which would have resulted if the old 77B proceedings had been carried to conclusion.

35. (a) We object to the statement "From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel prop-

erty was carried on by some representative of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company."

There is no evidence at all to support this statement.

(b) We object to the statement "Since 1931 Edward Ball was this representative and was on the payroll when this court took possession of the property in May, 1937."

329 Ball was appointed as one of the agents of City National at the time the City National took possession, not in 1931, but in 1935, and he was still its agent when the trustee in bankruptcy took custody. He was getting \$50. a month, and earned it. It is not true that Ball since 1931 was agent of any of the parties above mentioned, notwithstanding the further suggested finding "It is admitted by the pleadings and in evidence here that Mr. Ball was so retained to represent and to keep informed the Cody Trust Company and their successors in interest."

Mr. Ball was so retained when the trustee took possession, which was not in 1931.

(c) The statement in the last sentence "by various Chicago banks who held them as collateral for loans to Chicago Trust Company" is untrue. There is no evidence whatsoever in the record to this effect.

36. (a) We object to the opening statement "All these facts were known or available to City National."

There is no such evidence and, as above pointed out, the supposed facts are not facts.

(b) We object to the last sentence of the finding. City National did not become trustee until January 4, 1935—indenture trustee had no right of action against the underwriters—If it had, of what avail on and since January 4, 1935, with Codys and Central Republic insolvent, as well as Wenstrand. The indemnity mentioned ran to the surety company and not to the Granada estate.

37. We object to the entire finding. These statements represent counsel's conclusion of motives and secret intentions and suspicions, and are argumentative and not findings of ultimate fact.

330 We again object to the misstatement "that the bondholders' money has been used the second time to replace some furniture which Pick took away, and to purchase some fixtures from its successor."

38. (a) We object to the statement "At date of its

charter October 5, 1932, City National took over from Central Republic Bank and Trust Company and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division."

There is no evidence to support this.

(b) We object to the second, third, fourth, and fifth sentences of this finding. There is no such evidence. The testimony is that the City National furnishes facilities and personnel for the Committee, for the cost of which it is to be reimbursed.

(c) We object to the statement "When information is received that a default has occurred in a corporate issue, the method of operation is for City National to organize a bondholders committee. The names are chosen from among employees of Corporate Reorganization Division or other employees, nominees or officers of City National."

There is no such evidence, nor did the City National have anything to do with the organization of the Granada committee, the majority of whose members are not in any way connected either with the City National or with Central Republic Trust Company.

39. We object to the statement "For it there is a similar City National Bondholders Committee."

In view of the last preceding objection, the objection goes to the word "similar."

331 40. (a) We object to the statement "The committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

There is no evidence whatsoever to sustain this, and it is untrue and directly in contradiction of the sole evidence of record.

(b) We object to the statements commencing in the eleventh line of this finding with the words "The committee has been at all times dominated," etc., and ending with the words "as its depositary" at the end of the finding.

There was no occasion to record minutes of a plan of reorganization, for no plan prior to these proceedings was formulated and submitted to the committee for approval.

41. (a) We object to the first five sentences of this finding.

These statements are just not so. The testimony of the witness Johnson is to the contrary and shows why the committees were formed and why and in what cases City National as trustee would enter into possession.

(b) We object to the statement "no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganization; has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

332 As to the effort to effect group reorganization of the three properties—these statements are untrue. The evidence is directly to the contrary, and is undisputed, and it shows that serious consideration was given, and further shows the circumstances which made it impossible to handle the three as a unit.

As to any duty to effect a group reorganization,—there was none, and there is strong argument that the duty was just the opposite.

42. (a) We object to the first two sentences of this finding which state conclusions of law already answered in our brief

(b) We object to the third sentence of this finding—City National did not consummate a course of action planned for a year, etc. The two owner corporations did, and it was not planned for a year. The evidence is directly contrary on all points. Nor did City National charge anything off its books. The charge-off was made by the corporation officials on the corporation's books.

(c) We object to the statement that "The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."

The amounts which were being paid just prior to the time of the reduction of the charge were not those mentioned in the Barton contract.

43. (a) We object to the first sentence—The Granada has more unpaid taxes because it had to pay for furniture and fixtures, which in the case of the Arlington were part of the bondholders' security from the beginning. All available net income was applied by City National in re-
333 duction of taxes. The purpose of the reduction was to fix a fair and equitable rate instead of continuing to favor the Granada.

(b) We object to the implications contained in the second sentence—Mullins, receiver, and not City National, is

running the Manor, and the rate has been fixed by court order.

(c) We object to the sentence commencing "This deliberate purpose to favor the Arlington," etc.

There isn't any evidence that the reduction was forcibly made in any sense or of duress of any kind. The two corporations signed the agreement through their officers, who knew the facts and were satisfied.

(d) We emphatically object to the statement that "That contract" (the Barton contract) "remains in force at this time."

The contract is in evidence and it shows that it expired by its terms in 1933, if it had not sooner been terminated.

(e) We object to the statement and the implications thereof that "After trial of this suit Arlington, Inc., has refused to receive services under said contract since December 10, 1937; Arlington, Inc., is officered and controlled by City National employees, who have done this additional wrong to Granada."

This court has not undertaken to say whether Arlington, Inc. was under any obligation to continue to receive services. Moreover, any services received by it were from the trustee in bankruptcy and not by virtue of the Barton agreement, which expired in July of 1933 at the very latest. Also, there is no evidence showing that Arlington, Inc., is "officered and controlled" by City National employees, and even if that was the fact Arlington, Inc., did not cease taking service until the Granada was represented by the trustee in bankruptcy and not in any way by City National, and the trustee in bankruptcy was demanding an exorbitant rate.

44. (a) We object to the statement in the first sentence that one set of attorneys represented Cody Trust Company, Wenstrand, and Ball.

This firm never represented Cody Trust Company, Wenstrand or Ball in any matter affecting the Granada property.

(b) We object to the second, third, and fourth sentences of the proposed finding, which are supported by no evidence and are argumentative.

45. We object to this finding in its entirety. All litigation engaged in was necessary and unavoidable. These parties have not delayed or obstructed the prompt clearance of the affairs of the debtor estate. On the contrary, counsel and the committee procured, presented, and had

approved the plan of reorganization, confirmed herein in record time within sixty days from the outset of the proceedings.

The rest of the statements are argumentative and legal conclusions.

335 46. (a) We object to the parenthetical statement in the first sentence. City National was not appointed successor trustee by the Committee but by order of the Superior Court.

(b) We object to the statement "it dealt with Debtor property as though it were the general owner of all Granada affairs."

There is no evidence to support this. Indeed, the Court in its oral opinion found quite the contrary, stating, "And I say that if a mortgage trustee is going to go into possession and stay in possession for a long period of years, then it has got to find ways and means and law to authorize it to act like an owner or take the responsibility."

(c) We object to the statement "In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court."

City National, when appointed successor trustee, took possession of all property which its predecessor had held and its predecessor turned over to it so that it held both real and personal property, including any funds on hand. Its powers as successor trustee were not derived from any order of the Superior Court but from Article VIII of the Trust Deed and by law. In fact the order of the Superior Court was entirely silent on the matter and had to do only with its appointment as successor "with the same rights, powers, duties and immunities" as had been vested in or imposed on the original trustee.

(d) We object to the statement "When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

Neither the City National nor the Committee procured any court order or stipulation or otherwise purport-
336 ing to confer further powers on the trustee or to authorize the trustee to do anything. There is no evidence anywhere in the record to support the court trustee's statement.

(e) We object to the concluding sentence of this proposed finding, reading, "In present reorganization case, City National and said attorneys filed in writing objection

and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court."

The statement is untrue and is shown by the pleadings to be untrue. The City National did initially object to turning over possession but neither it, the Committee nor their counsel ever objected to the approval of the petitions in these proceedings or to a prompt reorganization.

47. We object to this proposed finding in its entirety on the ground that the statements therein contained are scandalous and impertinent. Moreover, there is no showing of record of any act done by the trustee in excess of its authority, nor is there any showing of record of any action which the trustee could or should have taken which it did not take if such action was authorized and was proper. No act is specified by the court trustee, his proposed finding is most general. As applied to any given action which it is claimed the trustee should or should not have taken, it should be perfectly simple to find as a matter of law whether it did or did not have the power, and as a matter of fact whether the action should or should not have been taken.

48. (a). We object to the statement that Exhibit "X" provided an "estimated basis of compensation between Granada Hotel and Arlington Hotel."

There is nothing estimated about it, it was the agreement.

337 (b) We object to the statement "The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

There is no such evidence.

(c) We object to the statement that the Thuma suit was allowed to lag along.

The evidence is that the case was promptly heard, was held under advisement by the Chancellor for a year and was in the Appellate and Superior Courts of Illinois until 1933.

(d) We deny the statement that "these attorneys withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company,"

The attorneys were from the beginning counsel of record for both Thuma and Chicago Trust Company and continued as such until their interests became conflicting, which was at the time that the trustee filed the cross bill

for a complete foreclosure. Up until then the interests of Thuma and the trustee were common.

49. (a) We admit the truth of the first sentence of the proposed finding but object to the implications for the evidence is clear and undisputed that a unit reorganization was impossible and that being so, of course, there was not "presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties."

(b) We object to the second and third sentences of the proposed finding and also the last sentence of the proposed finding on the ground that they do not purport to be fact findings but conclusions of law. We object to them as conclusions of law on the grounds heretofore pointed out in our brief.

338 (c) We again object to the statement, "It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May, 1929, when Granada Apartments, Inc. was organized."

There is no evidence that Mateer ever owned the stock or that he ceased to own the stock or that he ever managed the three properties or any two of them as a unit enterprise. Nor is there any evidence that control was taken from him in May of 1929 or at any other time.

50. We object to the finding in its entirety. It is not a finding of fact but is essentially the conclusion of law and as such it has been fully answered in our brief. Any and all parts thereof which do have to do with the facts appear somewhere in prior findings and have been objected to on the ground that they are either wholly unsupported by any evidence or are directly contrary to the only evidence of record.

51. We object to this proposed finding in its entirety. There were no acts of force, fraud and secrecy. Control was not held for the purpose or with the effect of hindering, defrauding and delaying creditors of the debtor. The record testimony shows in detail just what efforts were made to reorganize and why they were unsuccessful. As far as the right of the mortgage to remain in possession is concerned, under the rules of property in the State of Illinois it had and has the right after default to take and hold possession until the debt is paid or in some way discharged.

52. We object to this in its entirety as a finding of fact. It is a conclusion of law and as such has been answered in our brief.

339 . 53. We object to the proposed finding that One Thousand Dollars (\$1000) per month was the reasonable value of the services rendered by the Granada to The Arlington; first, on the ground that the Court did not so find in its oral opinion as above noted, and second, on the ground that the evidence does not support the finding. We have fully analyzed the evidence in the brief heretofore submitted and we refer to the brief for detail in support of the claim that the evidence does not support the finding.

54. We have above stated our objections to this finding.

55. We have stated our objection to this proposed finding under a separate heading above.

56. The same is true of our objections to the proposed findings here.

In addition, we here adopt and again urge the analyses made in our brief heretofore filed to show why these claims can not be sustained, although we again point out that the Court in its oral opinion never found that these claims aggregating approximately \$114,000 were sustained by the court trustee.

57. We have under a separate heading above noted our objection to this proposed finding in its entirety.

Also to findings 58, 59 and 60.

As To The Proposed Conclusions Of Law

We object and except to conclusions 61, 62, 63, 64 and 67 on the following grounds:

First, Taken even in the abstract they and each of them fail correctly to state the law.

340 Second, The facts of the case do not sustain the propositions in their essential parts.

Third, The propositions were recently rejected by the Court of Appeals for this Circuit.

We object to proposition numbered 66. The record does not show that the assets, property and business of the Debtor were depleted and that losses were sustained. The burden of sustaining his objections was on the court trustee.

We object to the conclusions stated at number 67 on the ground that the Court did not so find, and on the further ground that the court trustee has not maintained his objections filed by him on his own initiative.

We admit the correctness of the conclusion at number 69 but we deny its applicability to the case at bar. The beneficiaries were not "absent" as assumed by the court trustee but were in court as parties. It will be remembered that counsel for the mortgage trustee demonstrated this at the request of the Court.

We admit the correctness of proposition number 70 but deny its applicability to the case at bar.

We object to proposition numbered 71 and we refer the Court to our brief heretofore filed on this point.

We object to proposition numbered 72.

We object to proposition numbered 73 for the reasons first hereinabove stated. There is no provision in the Chandler Act which confers upon the District Court the right to make any chapter thereof applicable to pending litigation, excepting chapter 10 of the Act. There is no occasion to apply Chapter 10 which relates to reorganization for reorganization was consummated long before the Act became effective.

We object to proposition numbered 74 in which it is stated that the proposed findings will be considered and taken as sufficient abstract of the evidence in the record, for the reasons—

(1) They do not purport to be an abstract of the evidence in the record.

(2) The action was in bankruptcy and not in equity and this is true though the bankruptcy court had equitable powers. Accordingly, there was and is no requirement that the pleadings be printed and Rule 19 of the Court in respect of printing is inapplicable. Indeed, Rule 19 states as follows:

"Hereafter in all civil actions in which the complaint prays equitable relief, etc."

Bankruptcy actions are not civil actions and are expressly excluded from the new rules of civil procedure. See Rule 81 which says, "These rules . . . do not apply to proceedings in bankruptcy."

(3) In cases in which Rule 19 is applicable what is meant is that the parties shall prepare "an abstract of the proofs" for the use of the lower court. It, of course, was not intended by the District Court to prescribe by its rules what should be taken as a sufficient abstract for use in the Court of Appeals.

As To The Decree

We have the following comments:

1. It was not entered on the 24th of September, 1938, so the date at the beginning and at the end of the 342 decree must be changed to correspond with the date of entry.
2. After the name "City National Bank and Trust Company of Chicago" ending in the fourth line of the second paragraph of the decree should be inserted the words, "as amended." (There was an order entered September 14, 1937, granting the City National leave to file an amendment to the proof of claim instanter and the amendment was filed).
3. After the statement "and upon the answer and counterclaim by Court Trustee filed September 9, 1937" should be inserted "and the answer of City National Bank and Trust Company of Chicago, as Trustee, to said counterclaim." (Such answer was filed September 18, 1937, pursuant to order entered September 14, 1937, granting leave to the City National "to file such answer as it may desire to the counterclaim.")
4. In the fourth from the last line on the first page there is a recital that the matter comes on to be heard, among other things, "upon the briefs and suggestions made by the parties." The word "suggestions" no doubt relates to the suggested fact findings and propositions of law lodged by the respective parties. Those submitted by us should be ruled upon and marked "Hold" or "Refused" or in some other appropriate way and should then be filed at or prior to the time of the entry of the decree.
5. It is recited in the third from the last line that the matter comes on to be heard also "upon arguments of counsel before the Judge in open court." This should go out. There was no oral argument.
6. We object to number 1 on page two for the Court found in its oral opinion that \$10,000 was a reasonable fee for counsel for all services (including those mentioned 343 in paragraph 5 of Claim 9), of which the Court further found that \$5500 had been paid leaving a balance of \$4500.
7. We object to number 2 on page two for the reason that it is obviously inconsistent with the Court's oral opinion.
8. We object to numbers 3 and 4 on page two and

suggest that under the Court's oral opinion the petition, report and account of the City National should be approved in all respects. Any order offsetting fee allowances relates to paragraph 5 of Claim 9 and to the separate petitions of the Committee and counsel and not to the report and account of the City National, as Trustee, which report and account seeks allowance of no fees.

9. We object to number 5 on page two and submit that the answer, objections and counterclaim of the court trustee should be overruled and dismissed for want of equity, except to the extent of his claim that the mortgage trustee and the Committee are entitled to no further compensation (as is indicated at number 6 on page two).

10. The report and account of City National, as Trustee, set forth in detail various unpaid operating bills incurred by City National which it is averred the court trustee should assume and pay. There is no dispute as to the validity of these bills. The parties to whom they are owing have awaited the payment during the whole course of this litigation. There should be an order directing the court trustee and the New Company to assume them and to pay them forthwith.

11. Among the matters consolidated for hearing were the petition of the court trustee against The Arlington, Inc., and the answer of The Arlington, Inc., thereto. No disposition of the issue so raised was made in the 344 Court's oral opinion. In view of the matters which are contained in the Court's oral opinion, however, it would seem that the court trustee's petition against The Arlington, Inc., should be dismissed. This matter was mentioned orally to the Court on September 24, 1938, and it was suggested that until disposition is made by the Court The Arlington, Inc., is not in a position to distribute available dividends to its shareholders.

12. We assign the same objection to number 8 on page three as we assign to proposition of law number 73 above.

13. We except to the entry of any decree containing all or any of the provisions set forth at numbers 1, 2, 3, 4, 5 and 8 of the decree, as drafted, and to each and every the findings of fact and propositions of law as submitted by the court trustee.

As To The Findings Of Fact And Propositions Of Law Heretofore Lodged With The Court By City National Bank And Trust Company Of Chicago, As Trustee.

City National Bank and Trust Company of Chicago at the time of the filing of its brief and in December of 1937 lodged with the Court certain findings of fact and propositions of law which we now ask the Court to hold or refuse for the purpose, in so far as it is possible, of eliminating from further consideration those points, either of fact or of law, on which there may be no dispute. Such action will to a large degree tend at least to narrow the matter in controversy in this voluminous record. The findings of fact and propositions of law, as so lodged, are as follows:

"Findings Of Fact

The Court finds that:

1. Central Republic Trust Company, a corporation, as Trustee under trust deed recorded in the Recorder's 345 Office of Cook County, Illinois as Document 10161996, on March 22, 1934 took possession of the real estate and premises described in said trust deed and of all of the personal property located in the improvement thereon, and managed and operated the same until January 4, 1935.

2. Since January 3, 1935 City National Bank and Trust Company of Chicago has been, and it is now, the duly appointed, qualified and acting Successor Trustee under said trust deed Document 10161996.

3. That on January 4, 1935 City National Bank and Trust Company of Chicago, as such Successor Trustee, took possession of said property as mortgagee in possession after condition broken and operated the same continuously from January 4, 1935 to May 17, 1937, as of which latter date it voluntarily surrendered possession thereof to the Trustee in Bankruptcy herein.

4. On November 20, 1934 William L. O'Connell was duly appointed Receiver of Central Republic Trust Company by Edward J. Barrett as Auditor of Public Accounts of the State of Illinois, and at all of the times hereinafter mentioned was the duly appointed, qualified and acting Receiver of said Central Republic Trust Company.

5. Pursuant to order of the Superior Court of Cook County, Illinois entered in Cause 519151, said William L.

O'Connell, as such Receiver, filed in said proceedings last aforesaid the final report and account of Central Republic Trust Company as Trustee under said trust deed, and on February 11, 1935 the said final report and account was approved by order of said Court and said Receiver was directed to, and did, surrender to City National Bank and Trust Company of Chicago, as Successor Trustee, all property in his said final report and account described.

346 6. Such further proceedings were had in said Cause 519151 that City National Bank and Trust Company of Chicago, as such Successor Trustee, was substituted as complainant therein, and on February 18, 1935 it filed its supplemental complaint and the cause was referred to Robert C. O'Connell, a Master in Chancery of said Superior Court, who on due notice to all parties in interest took the proofs of the respective parties and filed his report in writing in the said cause, which said report was by order of said Court duly approved and the fees and charges of the said Master in Chancery were fixed, allowed and taxed as costs in said proceedings, following which and on the 18th day of December, 1936, a decree of sale was entered in said cause finding the amounts due, under said trust deed Document 10161996, City National Bank and Trust Company of Chicago for its own benefit and for the benefit of all of the holders of unpaid bonds and coupons secured by and outstanding under said trust deed and secured also by the chattel mortgage involved in this proceeding, which said decree also found, among other things, the amount due on the Receiver's certificate of indebtedness described in the plan of reorganization herein and fixed the relative priority of the liens securing the said several sums respectively found due the various parties.

7. In and by its complaint, as supplemented, so filed in said Cause 519151, City National Bank and Trust Company of Chicago, as Successor Trustee, sought, among other things, an accounting and statement of the amounts due it from Granada Hotel Corporation and Granada Apartments, Inc., and an accounting as to the precise amount due it under its said trust deed, and that upon the hearings of the said cause the Successor Trustee accounted to the defendants for all rents, issues, income, and profits
347 collected and disbursed by it for the period commencing January 3, 1935 and ending September 30, 1936; that in and by said decree the Court finds due City National Bank and Trust Company of Chicago, as Successor Trustee, the amounts due it under said trust deed after the

taking of such accounting, by reason of which the Court further finds that the said Successor Trustee has fully accounted for the period commencing January 3, 1935 and ending September 30, 1936.

8. On April 29, 1929 Granada Apartments, Inc., became and continuously since, to the time of the filing of the original petitions in these proceedings, has been the owner of the real estate and premises described in said trust deed Document 10161996.

9. The Superior Court of Cook County, Illinois in said Cause 519151 had jurisdiction of the said real and personal property and of the persons of Granada Apartments, Inc., Central Republic Trust Company, as Trustee under said Document 10161996, William L. O'Connell, as Receiver thereof, City National Bank and Trust Company of Chicago, as Successor Trustee aforesaid, and of the holders and owners of the indebtedness by said trust deed secured.

10. That in and by said trust deed Document 10161996 it is, among other things, provided:

(Article VIII, Section 2)

"In any case in which Mortgagor shall violate either condition to the provisions of Section 1 of this Article VIII or shall fail to perform any agreement or covenant hereunder, strictly and without grace, time being of the essence of this provision, Trustee shall, without notice, be entitled to the immediate possession of the mortgaged premises as for condition broken and may, by its agents, with or without entry, take actual or constructive possession of the mortgaged premises, together with all records, books, papers and accounts of Mortgagor relating thereto, or to Mortgagor's operation thereof, and exclude Mortgagor wholly therefrom; and Mortgagor agrees forthwith peaceably to surrender to Trustee and its agents the possession thereof. In any such case the assignment of rents, issues and profits of and from the mortgaged premises hereby presently made or intended to be made shall cease to be suspended and shall become effective as of the date hereof and Mortgagor and all tenants of Mortgagor or other persons occupying the mortgaged premises shall forthwith attorn to Trustee and thereafter pay and account to Trustee for all and every such rents, issues and profits then accrued and unpaid."

(Article V, Section 3)

"Mortgagor covenants at all times and from time to time, upon the request of Trustee, to cause to be executed, acknowledged, verified and delivered instruments of chattel

mortgage and for extension of chattel mortgage upon personal property pertaining to operation of the mortgaged premises and all such assurances of title and additional papers and instruments and to do or cause to be done all acts and things which Trustee may deem necessary or desirable for effectually carrying out the intent hereof or for protecting and strengthening the security for payment of Bonds issued hereunder, or for confirming or assuring the lien of this Trust Deed as a first mortgage on the premises hereby conveyed and mortgaged, any appurtenances thereto and the rents, issues and profits thereof."

(Article VI, Sections 1 and 2)

"Trustee is hereby authorized (or, in case of refusal to act, the legal holder or holders of not less than twenty-five per cent. (25%) in amount of the Bonds hereby secured and outstanding at such time, is or are hereby authorized), but not required, whenever it may become necessary or advisable to do so by reason of the delinquency of Mortgagor in the performance of the appropriate covenant of this Trust Deed, if after demand in writing from Trustee such delinquency is not remedied within a reasonable time but not more than thirty (30) days (a) to procure or renew insurance and pay for the same, (b) to collect insurance moneys and pay the expenses of such collection, (c) to place said premises in proper condition and repair, (d) to discharge taxes or assessments or other charges levied, imposed or assessed upon the mortgaged property, or any part thereof, (e) to redeem the same from any tax or foreclosure sale or forfeiture or to purchase any tax or foreclosure title thereon, (f) to remove any mechanic's lien or other lien or encumbrance thereon, (g) to carry on the prosecution or defense of any suit affecting the security for the Bonds issued hereunder or to which Trustee and/or Bondholders as such may be party and to advance or expend the necessary money for any of said purposes, including the payment of reasonable solicitors', counsel and lawyers' fees and court costs, stenographers' charges, expenses for procuring evidence, if any, and any and all costs for the preparation for trial and/or trial of any such suit, and/or (h) to remedy or forestall any other default of Mortgagor hereunder, always excepting the payment of Bonds or Interest Coupons secured hereby.

349 "Mortgagor expressly covenants to pay to Trustee and/or to Bondholders all moneys so advanced or expended under the provisions of this Article, with interest

on each item at seven per cent (7%) per annum, as well as reasonable compensation for the service of Trustee hereunder, all of which sums shall be deemed a first lien on said premises prior and paramount to the Bonds hereby secured, and are hereby declared to be so much additional indebtedness secured by this Trust Deed and to be payable on demand in the same coin as the bonded indebtedness secured hereby."

(Article IX, Section 6)

"Any holder of the Bonds hereby secured accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity, upon or under this Trust Deed is vested primarily exclusively in Trustee as if trustee of an express trust, and under no circumstances shall the holder of any Bond or Interest Coupon have the right, alone or with other holders, to institute any action at law or any suit or proceeding in equity for the purpose of enforcing any payment, covenant or remedy herein or in said Bonds contained or to foreclose this Mortgage, unless Trustee shall, after thirty (30) days' request in writing by holders of not less than twenty-five per cent. (25%) in amount of the outstanding Bonds and upon having been tendered satisfactory indemnity, have refused to take the action requested or other appropriate action."

(Article XI, Section 2)

"Trustee shall not be answerable for the default or misconduct of any attorney, agent, agency or employee appointed or employed by it, if selected with reasonable care, nor shall Trustee be answerable for any error of judgment or for any act done or step taken or omitted by it in good faith nor for any mistake of fact or of law based on information or advice deemed authentic and correct. The officers, representatives, employees and attorneys of Trustee shall have the same immunities from liability as Trustee and each shall be liable only for his own intentional and wilful wrong-doing."

11. That during the period of its possession of said property as aforesaid City National Bank and Trust Company of Chicago, as Successor Trustee, retained as and for its compensation as Trustee in possession of said property a sum equal to four per cent (4%) of the gross rents, issues, income, and profits thereof (inclusive of the compensation paid to its agent, Hall), and the Court finds that the amounts so retained were the fair, usual, reasonable

and customary charges made in Chicago during said 350 period for operating, leasing and managing similar properties and collecting and disbursing the rents, issues, income and profits thereof.

12. Under the terms and provisions of the said trust deed the Trustee is entitled to reasonable compensation for itself and its agents for possessing, operating, leasing and managing said property and collecting and disbursing the rents, issues, income and profits thereof.

13. On, to wit, the 11th day of August, 1933, by order of the Superior Court of Cook County, Illinois entered in said Cause 519151, there was issued in said proceedings a Receiver's certificate of indebtedness in the principal sum of Eleven Thousand Five Hundred Dollars (\$11,500), due thirty-six months from that date, with interest at the rate of five per cent per annum, which certificate by the terms of said order was a lien upon said real estate and premises prior to the lien thereon of said trust deed Document 10161996.

14. By order of said Superior Court of Cook County, Illinois entered in said Cause 519151 on March 16, 1934, Central Republic Trust Company, the then Trustee under said trust deed Document 10161996, was directed to assume liability for the payment of the balance due on the Receiver's certificate of indebtedness theretofore issued and then outstanding in said proceeding, and in and by said order it was further provided that the said certificate remain a lien in pursuance of its terms and provisions and of said order of August 11, 1933.

15. The furniture, furnishings, and equipment originally placed in the improvement on said premises were not paid for out of the proceeds of the first mortgage loan and that to secure the unpaid portion of the purchase price thereof Albert Pick & Company took a chattel mortgage 351 thereon from Granada Hotel Corporation, and, default having been made under the said mortgage, it brought its action to foreclose the same in the Circuit Court of Cook County, Illinois in proceedings which progressed to a decree of sale, by virtue of which the furniture and furnishings were sold and purchased by International and Industrial Securities Corporation, but only after litigation in respect thereof had been carried without adverse effect on its interests to the United States Supreme Court. International and Industrial Securities Corporation intervened in said Cause 519151 and was permitted to remove the loose furniture from said premises,

but the Court reserved jurisdiction to determine whether the ozite, carpets, in-a-door beds, china and kitchen cases were fixtures and part of the security intended to be effected by the real estate trust deeds or whether they were removable personalty subject to the Pick chattel mortgage aforesaid. At and prior to the time of such removal the premises were refurnished, the unpaid portion of the purchase price being secured by the conditional sales contract now held by Continental Illinois National Bank and Trust Company of Chicago, as set forth in the plan herein.

16. Central Republic Trust Company, as Trustee under said Document 10161996, litigated the said fixtures question in said proceedings 519151 and in the Appellate Court in and for the First District of Illinois, and by way of petition for certiorari to the Supreme Court of Illinois, where it was held that the said items were not fixtures but were part of the security intended to be effected by the Pick chattel mortgage.

17. International and Industrial Securities Corporation was entitled and about to remove its said property. The earnings of the Granada were, and had been, insufficient to provide a fund sufficient to purchase new items in replacement of these or with which to settle the claim, or 352 with which to purchase the said items so owned by International and Industrial Securities Corporation. The removal of those items would have rendered the premises untenable and would have materially injured the building itself. To provide the balance of the funds necessary to purchase the said items at a price of \$22,500.00, the said Receiver's certificate of indebtedness was ordered to be issued and the face amount thereof was paid therefor to the Receiver and used by the Receiver, together with funds in its possession, to purchase the said ozite, carpets, kitchen and china cases, and in-a-door beds.

18. At the same time Central Republic Trust Company, as Trustee, demanded and obtained from all parties in interest the chattel mortgage and note mentioned in the plan herein, which for the first time gave the bondholders a lien on the furniture, furnishings and equipment as additional security for the payment of their bonds, such lien being subject to the Receiver's certificate of indebtedness and to the said conditional sales contract held by Continental Illinois National Bank and Trust Company of Chicago, as aforesaid.

19. On January 4, 1935, when City National Bank and Trust Company of Chicago took possession as Trustee as

aforesaid, there was a balance of \$7,011.01 due and unpaid on said Receiver's certificate of indebtedness and on said conditional sales contract in the sum of \$19,400.00, which balances were reduced to \$4,000.00 and \$3,000.00, respectively, through payments on account thereof by City National Bank and Trust Company of Chicago, as Successor Trustee.

353 20. The said balances, pursuant to the provisions of the plan of reorganization as confirmed herein, are to be assumed and paid in cash by the reorganized company.

21. On July 31, 1933, the value of the said personal property then located, as aforesaid, in the Granada Hotel, predicated on the then market value new, less depreciation, was \$42,956.50.

22. The sum of \$4,025.29 was necessarily, reasonably, and properly expended by City National Bank and Trust Company of Chicago, as Trustee, for the costs, fees and expenses incurred in contesting the original involuntary proceedings respectively brought under Section 77B of the Bankruptcy Act against Granada Hotel Corporation and Granada Apartments, Inc.

23. The said several unpaid bills and obligations mentioned in paragraph 24 of the report filed by City National Bank and Trust Company, as Trustee, herein were properly incurred and are charges against the estate of the Debtor herein and should be assumed and paid by the Trustee in Bankruptcy herein.

24. A sum not in excess of \$600.00 per month was a reasonable charge to be made for the heat, hot and cold water, and refrigeration furnished by the Granada to the Arlington Hotel during the period extending from March 22, 1934 to May 17, 1937.

25. No refrigeration was furnished to the Arlington Hotel by the Granada after August 18, 1937.

26. A reasonable charge to be made for the heat, hot and cold water furnished to the Arlington Hotel by the Granada from August 18, 1937, to December 1, 1937 does not exceed \$375.00 per month.

354 27. The sum \$7,200.00 for heat, hot and cold water, and refrigeration furnished the Arlington by the Granada during the year 1933 was agreed upon in writing by and between Granada Apartments, Inc., the then owner of the Granada, and Warren Hart Apartments Building Corporation, the then owner of the Arlington, prior to the time that Central Republic Trust Company,

as Trustee, entered into possession of either the Arlington or the Granada.

28. Under the zoning ordinances of the City of Chicago in effect March 27, 1935 and continuously since the Granada lobby space could not have been, and may not be, utilized for commercial purposes excepting for the operation of a dining room, and then without access to the street except through the lobby of the Granada and provided that no street window or other exterior display or other exterior sign might or may be used to advertise such use.

29. Structural changes and improvements must necessarily have been made to convert the ballroom and adjoining space to dining room and kitchen purposes.

30. The excess lobby space could not with profit to the Granada have been utilized for commercial purposes.

31. There is no competent evidence of record to establish the reasonable rental value of the excess lobby space of any part thereof.

32. At the time City National Bank and Trust Company of Chicago took possession of the Granada as Trustee there was a valet shop in the basement of the Granada, being maintained for the convenience of Granada tenants. The Arlington had been sending work to the Granada valet shop, which increased the volume for the operator thereof and enabled him to remain in the Granada premises 355 for the convenience of the Granada guests, and the said operator paid to the Arlington a commission for the work sent. The valet was not occupying space in the Arlington and the Arlington was at liberty to send its work wherever it pleased. If it had done so it would have gotten an equal commission without providing any space.

33. The house fund at the Granada at the time of the appointment of the Trustee in Bankruptcy herein had been there provided by City National Bank and Trust Company of Chicago, as Trustee. That after such appointment the said fund, together with other funds in the possession of City National Bank and Trust Company, as Trustee, was used to pay operating bills approved by the Trustee in Bankruptcy, and was fully disbursed for that purpose.

34. On May 25, 1937, City National Bank and Trust Company of Chicago, as Trustee, turned over to the Trustee in Bankruptcy the sum of \$773.40, representing the balance of cash then in its hands as Trustee in posses-

sion over and above amounts held by City National Bank and Trust Company as Trustee under the indenture for the benefit of persons other than the debtor.

35. City National Bank and Trust Company of Chicago and its counsel advised the Trustee in Bankruptcy at the time that he demanded surrender by it of the moneys in its possession as Trustee under the indenture it would turn over such moneys to him on express order of court directing it so to do, notwithstanding that in their opinion the said moneys were not the property of the Debtor.

36. Individual electric refrigerators are more economical, efficient, sightly, and more desirable to the tenants than the brine system in operation at the Granada.

356 37. Adequate General Electric individual refrigerators could during the period of possession by City National Bank and Trust Company of Chicago, as Trustee of the Arlington, have been, and since have been installed in the Arlington Hotel at a cost which, together with three years operating and maintenance charges, does not exceed a sum equal to three times the annual charge requested by the Trustee in Bankruptcy from the Arlington for refrigeration supplied to the Arlington through the Granada brine refrigerating plant.

38. At any time during the period from March 22, 1934 to May 17, 1937 the Arlington could have installed its own heating plant and its own compressors and pumps to operate a brine refrigerating system and have operated the same so as to supply its own heat, hot and cold water, and refrigeration at an annual cost of \$5,405.05, including in said amount all operating charges and fixed charges on the capital investment.

39. Granada Hotel Corporation was dissolved by decree of the Superior Court of Cook County, Illinois entered May 17, 1930 in cause there numbered 50985.

40. The Committee, long prior to the time of the filing of the petitions in bankruptcy herein requested Granada Apartments, Inc., and its stockholders to file a voluntary petition under Section 77B of the Bankruptcy Act to affect a reorganization, but they refused so to do until after the involuntary petition in these consolidated causes had been filed.

41. At and since the time of the appointment of City National Bank and Trust Company of Chicago, as
357 Successor Trustee under Document 10131996, City Trust Company and Central Republic Trust Company were insolvent, so that an action against them or either of them would have been unavailing.

Propositions of Law.

The Court holds as propositions of law that:

1. An involuntary petition filed under Section 77B of the Bankruptcy Act against a corporation organized under the laws of the State of Illinois and dissolved more than two years before the filing of said petition will not lie.

2. An involuntary petition filed under Section 77B of the Bankruptcy Act and predicated upon neither an act of bankruptcy nor a pending equity receivership confers no jurisdiction upon the Court in which filed so as to enable it to effect a valid reorganization in the absence of an affirmative answer filed to said petition by the debtor corporation admitting insolvency or inability to pay its debts as they mature, admitting the need for reorganization, and assenting to the jurisdiction of the Court for that purpose.

3. Inasmuch as the Supreme Court of the United States in the case of *Tuttle v. Harris*, 297 U. S. 225, held that the United States District Court was without jurisdiction to reorganize in the proceedings below, the Committee and the Trustee were justified in opposing and contesting that invalid proceeding.

4. Under the law of the State of Illinois the right of a mortgagee to hold possession for condition broken ceases when the mortgage indebtedness is paid or otherwise legally extinguished.

358 5. Prior to payment, or extinguishment, of the mortgage indebtedness by a distribution of new securities pursuant to a confirmed plan of reorganization, or by other legal means, the Court in a proceeding under Section 77B of the Bankruptcy Act in which no order of adjudication has been entered is without power to compel a mortgagee in possession for condition broken of real estate situate in Illinois to surrender possession to the bankruptcy court or to its temporary trustee appointed in said proceeding.

6. An order approving as properly filed and as filed in good faith a petition under Section 77B of the Bankruptcy Act is a final order and may not, more than thirty days after the date of its entry be vacated or set aside save for fraud as mistake cognizable in equity or except by consent of the creditors.

7. A trustee in bankruptcy whose bond has not been furnished and approved may not enter upon performance

of his official duties and is not vested with title to the debtor's property.

8. A decree of sale entered within four months of the filing of a petition in bankruptcy in proceedings brought to foreclose the lien of a mortgage made and recorded more than four months prior to the filing of such petition is no less valid than one entered more than four months before the filing of the bankruptcy petition.

9. The jurisdiction of the bankruptcy court is not paramount so as to supersede the jurisdiction orders and decrees of the state court obtained and entered more than four months before the filing of the petition in bankruptcy in prior proceedings for the foreclosure of a mortgage.

359 10. A mortgagee in possession of real estate situate in Illinois is without power to make a lease binding after redemption in the absence of express authority so to do.

11. A mortgagee in possession for condition broken is without power to make structural changes or improvements, even though increased revenues is assured on account thereof.

12. City National Bank and Trust Company of Chicago, as Trustee, was under no duty or obligation to seek from the parties in interest a grant of further powers beyond those conferred in and by the indenture under which it accepted the successor trusteeship.

13. Such further grant of power, if obtained from the mortgagor and the bondholders, would not be binding on the numerous junior encumbrancers whose liens were of record prior to the grant of further powers.

14. That upon the resignation of Central Republic Trust Company, as Trustee under said Document 10161996, filed by William L. O'Connell, its Receiver, in proceedings for foreclosure of said trust deed theretofore brought in the state court by said Trustee, as representative of all bondholders, and upon the refusal of Chicago Title and Trust Company to act as Successor Trustee, the Court, on petition of the Committee filed in said foreclosure proceedings, had power to appoint a Successor Trustee.

15. That the Committee under the terms of its deposit agreement was a bondholder entitled to seek appointment of a successor trustee in case one was required.

16. That in and by the orders heretofore entered herein for the filing of claims and confirmation of the plan of reorganization and for all purposes of the proceedings

herein City National Bank and Trust Company of Chicago has been recognized as and found to be the Successor Trustee under said Document 10161996.

360 17. That the decree entered in said Cause 519151 on December 18, 1936, as aforesaid, is determinative of the question as to whether City National Bank and Trust Company of Chicago is the duly appointed, qualified and acting Successor Trustee under said Document 10161996.

18. That the Statute of Gloucester in the counterclaim of the Trustee in Bankruptcy mentioned is penal in nature and not enforceable in equity.

19. That the said several matters complained of by the Trustee in Bankruptcy against City National Bank and Trust Company of Chicago, as Trustee, do not (with the exception of the averment of its failure to keep the incinerator and pump in repair) constitute waste at common law.

20. That the burden of establishing by the preponderance or greater weight of the evidence the matters and things complained of against City National Bank and Trust Company of Chicago, as Successor Trustee, by the counterclaimant in and by his said counterclaim rests on the counterclaimant.

21. That the counterclaimant has failed to establish by the greater weight or preponderance of the evidence the said several matters and things by him in his said counterclaim complained of, or any or either of them.

22. That any right of action against the underwriters of the Granada bond issue was vested in the bondholders and not in the Trustee under said Document 10161996.

23. Under the law of Illinois a court of chancery will not interfere to enjoin waste by the owner of a base or determinable fee, unless the contingency which is to 361 determine the estate is reasonably certain to happen and unless the waste is of a character to charge the owner with a wanton and unconscientious abuse of his rights.

24. City National Bank and Trust Company of Chicago, as Successor Trustee, while liable for any breach of trust, is not liable for mere mistake of judgment nor for the honest and reasonable exercise of discretionary powers.

25. Since the Court cannot direct a trustee how to exercise a discretionary power, it cannot censure the Trustee or hold it liable for the choice it makes in the exercise of that power so long as it is not guilty of bad faith and is

not acting in a wholly unreasonable and arbitrary manner."

Defrees, Buckingham, Jones & Hoffman,
Attorneys pro se and for City National Bank and Trust Company of Chicago, Individually and as Trustee, and for said Bondholders Committee.

388 And on, to wit, the 15th day of July, 1938, there was
filed in the Clerk's office of said Court a certain Transcript of Proceedings in words and figures following, to wit:

Filed
July 15,
1938.

389 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811.) * *

TRANSCRIPT OF PROCEEDINGS.

Before:

Hon. John P. Barnes, J.

Decision.

Claim No. 9.

390 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811.) * *

TRANSCRIPT OF PROCEEDINGS.

The following is a transcript of the proceedings had in the above entitled cause on Thursday, July 14; A. D. 1938, beginning at the hour of 2:00 o'clock P. M., before the Hon. John P. Barnes, one of the Judges of said Court.

Parties met pursuant to notice.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman,
Represented by Don Kenneth Jones, Esq., Vincent
O'Brien, Esq., and Tracy W. Buckingham, Esq.
Weightstill Woods, Esq., and other Counsel.

And thereupon the following proceedings were had herein:

391 The Clerk: 65811. Granada Apartments, Inc., for decision.

The Court: You may be seated, gentlemen, if you can find chairs.

I went over the briefs in this case immediately after their filing, and then put them away for some weeks or months, and then went over them again carefully. And I have reached some conclusions which I will now express to you.

The questions presented to the Court arise on final reports of a mortgage trustee-in-possession, and on objections thereto, and on the application of the mortgage trustee, a Bondholders' Committee, and counsel for the mortgage trustee and Bondholders' Committee, for allowances of fees, and objections to such applications for allowances of fees by the Court Trustee, in this 77B proceeding.

The subject matter of this 77B proceeding is a so-called apartment hotel on the North Side of the City of Chicago, known as The Granada. I think the name of the debtor is, Granada Apartments, Inc.—if I am not mistaken.

The real estate and building of that debtor was encumbered by a first mortgage bond issue, of which \$485,500 principal amount of bonds were outstanding. Of these bonds, \$331,600 principal amount were deposited with the depository, the City National Bank and Trust Company. Is it the City National Bank and Trust Company?

Mr. O'Brien: "of Chicago."

Mr. Woods: That is right.

The Court: And in respect of these \$331,600 principal amount of bonds, the Bondholders' Committee in question acted.

This property was in court for a long time; just how long, I don't remember, but it was in the State Court for a long time.

Mr. Bickel and Mr. Sturm, of the City National Bank and Trust Company, testified that the City National at all times did the actual work of managing the property and handling the finances from the date of its organization on October 5, 1932.

First, the Chicago Title and Trust Company was appointed receiver in the State Court. Perhaps that appointment might be said to be in name only, because while it was appointed it was directed not to take possession.

And later The National Republic Bank and Trust Company was appointed. I don't remember whether

The National Republic Bank and Trust Company was appointed receiver, or whether it went into possession as mortgage trustee-in-possession; but whatever The National Republic Bank and Trust Company was supposed to do, whether it be as receiver or trustee-in-possession, was done by the City National Bank and Trust Company, as agent.

I do not know that these facts are all material to what I am about to conclude, except that they do give us the setting for the controversy.

I think I will first discuss the fees which have been requested.

The Committee, which is made up of officers and employees of the City National Bank and Trust Company, for its services asks the sum of \$10,000; for out-of-pocket expenses of the Committee it asks the sum of \$2,285.21.

For the services of the City National Bank and Trust Company as depositary, the Committee asks the sum of \$3,200.

For the services of the counsel for the Committee and the Trustee, the sum of \$30,000 is asked.

The City National Bank and Trust Company has 394 had not less than \$7,041.13 already, for management fees.

I got those figures, \$7,041.13 from one place in the papers. At another place I found that the City National Bank and Trust Company, as trustee-in-possession, for management there from January 4, 1935, to May 1, 1937, had received \$8,325.15. And then in another place I find that the City National Bank and Trust Company, for services in foreclosure desires the sum of \$2,560.00.

And I was interested to know the aggregate of these items. So I added up the \$30,000 requested for the attorneys' fees, the \$10,000 requested for the services of the Committee, the \$2,285.21 requested for the out-of-pocket expenses of the Committee, the \$3,200.00 requested for the services of the depositary—the City Bank and Trust Company, the \$7,041.13 already received by the City National Bank and Trust Company for management—assuming that it was \$7,041.13 instead of \$8,325.25, and disregarding what the City National Bank and Trust Company received as agent of the National Republic Bank and Trust Company, and I had an aggregate of \$52,526.34.

And then I observed that I had omitted that 395 which the City National Bank and Trust Company desires for its services in foreclosure; and adding

them all together I get \$55,086.34, which is a good round figure, something in excess of 15 per cent of the amount of bonds on deposit with the Committee.

I looked into this claim of the depositary, of \$3200 for depositary's fees, as depositary for the Committee, and I find that it issued 450 certificates, of which 71 were transfers, and 379 original deposits. That is \$7.11 a certificate for every certificate issued, including the transfers. That is more than three times what the service is reasonably worth.

I think a reasonable fee for the issuance of a certificate is not to exceed \$1.25 a certificate; but in order that no injustice might be done, we might say a maximum of \$2.00 a certificate; that would be, 2 times 450, or \$900; and then in order just to make doubly sure that no injustice would be done, we might add a docket fee of \$250; and all that we would get would be \$1,150, which is almost exactly a third of the fee requested as depositary.

The attorneys have already had \$5,500. What this 396 building is worth, I don't know; and I do not know that there is any value stated in the record.

Mr. O'Brien: \$400,000.

The Court: What?

Mr. O'Brien: 400,000, the record shows.

The Court: How do you justify that?

Mr. O'Brien: That is the record.

The Court: That is what?

Mr. O'Brien: That is the record.

The Court: That is the record?

Mr. O'Brien: Yes.

The Court: Well, if it is a \$400,000 building, it has been a \$400,000 building that could not pay its taxes under the management of your client.

The services of counsel for the Trustee and for the Bondholders' Committee have extended over a long period, longer I think than was necessary.

Counsel have already had \$5,500. I think a reasonable fee would be not to exceed \$10,000; leaving a balance, if anything were due, of \$4,500.

The Committee, for its services, asks \$10,000. Now, how any man could justify that demand, I don't know.

Those men who make that claim are officers of the 397 Trustee. I think the Court, or anyone else looking at the facts in this case, is justified in concluding that

the Committee was organized to bring business to the Trustee, and keep it there.

The assistance of a committee is sometimes justified on the theory that it speaks for a part of the bonds only, that part which has been deposited with it, while the Trustee acts for all of the bondholders, and therefore the Trustee is entitled to a fee, and the Committee is entitled to a fee; the Trustee because it acts for all the bondholders, the Committee because it acts for the bondholders who have deposited with it. But how the officers of the Trustee can constitute themselves a committee and ask for fees additional to those allowed to the Trustee, I cannot figure out. How such a committee can be a protection to the Trustee I cannot figure out. How there can be any justification for the expenses of such a committee, I cannot figure out. But assuming that their existence is justified—there were five of them—I think the maximum fee that they could be allowed for their service would be \$200 apiece, or \$1,000. Assuming that all of this out-of-pocket expense of \$207.24 is justified, assuming that 398 the depository is entitled to \$1,150, the maximum that the Committee could be entitled to would be \$4,157.24.

I think a reasonable fee for the Trustee for its fee, if it is entitled to anything over and above that management fee which it took in the sum of \$7,401.13—or \$8,325.15, whichever be correct; if it is entitled to anything over and above that, I do not think it could be more than \$500. I can't see any justification for anything over and above what it took for its management fee.

The best I can make out of it, the most that could go to the attorneys would be \$4,500; \$4,157.24 to the Committee; and \$500 to the Trustee—the more I think about it the less justification I can find for that \$500 when the Trustee has already had this \$7,041.13.

Now, that is the matter of fees. And I have disregarded the objections and the complaints which the Court Trustee has made. I am going to take those up now.

The Court Trustee says that the City National Bank and Trust Company connived at the payment of moneys out of the receivership for the buying of kitchen cabinets and carpet linings which had been authorized 399 be taken out of the building, and that those sums which were paid, ostensibly for kitchen cabinets and carpet linings were in fact paid to take care of the liabilities of third persons on bonds given in this and other courts,

which liabilities aggregated large amounts, for which sums neither the bondholders nor the debtor were liable; that is, the moneys which were in fact paid to discharge those liabilities on injunction bonds, were ostensibly paid to buy kitchen cabinets and carpet linings, and were improperly paid.

That controversy has had the attention of the Court in another connection. I have within the week filed a transcript of some observations I made in respect of Claim 8—Claim No. 8 in this proceeding. I think all, or substantially all of the facts which were before me on Claim 8 were before me in this matter now before me; and I now refer to what I said within the week on Claim 8 as being applicable here.

Now, it will be said that the City National Bank and Trust Company did not issue that receiver's certificate, that it was not receiver, or that it was not Trustee 400 at the time of the issuance of the receiver's certificate which was issued to pay for those liabilities on those injunction bonds. It is true. But it was agent for the Trustee or for the receiver, and it and its officers, the Bondholders' Committee, and its counsel arranged for the giving of that receiver's certificate and the payment of the additional sum of \$13,000—the receiver's certificate was in the sum of \$11,500, and there was a further sum of \$13,000 in cash, paid out of the funds of this debtor.

The City National Bank and Trust Company and its officers and its counsel, arranged for that issuance of that receiver's certificate, and for the payment out of that \$13,000. Even if it is not liable for all of that, it did make payments on account of that receiver's certificate, knowing all the facts, and knowing that all of the facts were not communicated to the Court that purported to authorize the issuance of that receiver's certificate. That is one of the complaints the Court Trustee makes against the City National Bank and Trust Company.

Another complaint he makes is that the City National Bank and Trust Company in managing this property did not do all that a reasonably prudent person should do 401 to rent the lobby space in this Granada Hotel.

It seems that this Granada Hotel was built as the central building of a group of hotels. In it, was placed a power plant, a heating plant which was designed to accommodate the Granada and the four other hotels to be erected. Included in the Granada was a large amount

of public space, apparently designed to serve as a meeting place for the people in these other four hotels, and with the result that this building belonging to the debtor now before the Court had an excess of public space—a large excess of public space, more than was needed for the people living in the building.

The record discloses that the City National Bank and Trust Company made no effort to use that space so as to bring in a profit to the debtor. Now, the Trustee states a great many reasons why it could not do anything about it. The zoning ordinance was one reason. The limited power of a mortgage trustee-in-possession, was another reason.

Well, now, this is the way the Court views a matter like that: If a mortgage trustee is going to so act that it goes into possession to stay in possession for a long period of years, then it has got to find law that will authorize it to act like an owner. And no owner over a long period of years allows a large amount of space to go vacant in a building that he may own. And I say, that if a mortgage trustee is going to go into possession, and stay in possession for a long period of years, then it has got to find ways and means, and law to authorize it to act like an owner, or take the responsibility.

The court trustee further says that the City National Bank and Trust Company, without warrant reduced the rental which was being paid by the Arlington, another building, for heat and power and light. I think the Court Trustee is justified in his contentions.

The City National Bank and Trust Company was carrying water on both shoulders. The burden is on it to show that the changes which it made in amounts being charged for that service, were warranted. I do not think it has met that burden.

I think the effort of the City National Bank and of the Bondholders' Committee, and the desire, was to stay in possession, and collect the management fees as long as possible. I think that was the primary intent. Maybe they didn't realize it themselves, that that was their purpose; but I do not think that they had any deep concern about getting this property out of court, getting it into the hands of the real owners. I think their real concern was to keep it, keep the management as long as they could, and collect as much for it as they could. That is the impression I get.

I have deliberated quite a long while as to whether or not I should charge this trustee with anything over and above the amount which would otherwise be payable to it as fees and disbursements. That was one reason I put these briefs away and let the matter rest for two or three months. I don't want to do that bank any injustice, but I think it has done that property some injustice.

Now, upon consideration, I have concluded that certainly the Bank will not be harmed if I set off the claims which the Court Trustee has against it, against its claims for further fees and allowances, and the further fees and allowances of the Bondholders' Committee, the Trustee's officers and employes who act as a committee. So we will leave these parties just where they find them—where

I now find them. The Trustee will not be paid any 404 further moneys; the Bondholders' Committee will not be paid any moneys; and if the Trustee desires its counsel to have any further moneys it will have to compensate its counsel, because there will be no further allowances to the Trustee for its counsel, no further allowance to the Bondholders' Committee.

Counsel for the Court Trustee may prepare, and on notice, present findings of fact and conclusions of law, and a decree consistent with what I have stated.

Counsel for the Court Trustee may also, within a short day, submit to me a transcript of what I have said at this time. I will look it over, and make any grammatical changes that I deem necessary and will then ask the Court Trustee to re-write it, and I will file it. I will try not to make any substantial changes in it.

(Which were all the proceedings had in the above entitled cause at the time and place aforesaid.)

Let the foregoing be filed of record:

John P. Barnes,
Judge.

405 And afterwards, to wit, on the 2nd day of May, A. D. 1939, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Findings of Fact and Conclusions of Law.

406

IN THE UNITED STATES DISTRICT COURT.

(Caption—65811)

Filed
May 2,
1938.

Equitable Relief Sought.

Claim No. 9 and Petitions.

Counterclaim by Court Trustee.

THE COURT MAKES AND RECORDS THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER FULL HEARINGS IN OPEN COURT, UPON ISSUES AND PLEADINGS, MENTIONED BELOW IN PARAGRAPHS 5, 6 AND 7.

I. History of Pleadings and Trial.

1. The Debtor herein, Granada Apartments Inc., a corporation, on April 23, 1937, filed its petition asking relief under all pertinent sections of the Bankruptcy Act of 1898 as amended and supplemented by Acts of Congress, and thereafter on May 17, 1937, the said petition together with an involuntary petition which has been filed at Danville and transferred to Chicago, were both approved as properly filed; and were consolidated as one case 65811 in this Court.

2. Weightstill Woods by order of this Court entered May 17, 1937, was appointed, and by order May 24, 1938, now remains the duly qualified and acting Federal Trustee for estate of Granada debtor in the reorganization proceedings, under Chapters II and X of amended law.

3. This Court by order July 14, 1937, confirmed a plan of reorganization for the property and affairs of Granada debtor; and by orders July 14, 1937, and thereafter, has reserved full power and jurisdiction to hear and determine all matters now presented. Pursuant to said plan all Granada trust deeds made in 1928 as hereinafter mentioned, have been cancelled and released of record February 10, 1938, upon written request by the bondholders committee.

4. Weightstill Woods filed his bond and qualified and has acted since said appointment as Trustee in Bankruptcy for the Debtor; all pursuant to reorganization provisions of Bankruptcy Act; and further said Trustee by order of this Court May 17, 1937, was directed to de-

mand and take possession and control of all the assets and property of the Debtor and to carry on the business of the Debtor pursuant to the orders and direction of the Judge, and said Trustee has been since said date authorized to defend, and is now carrying on this litigation, by order of the Court.

5. Pursuant to an order by the Judge entered May 24, 1937, directing claims to be filed, City National filed its claim No. 9 on June 23, 1937; and thereafter Weightstill Woods as Court Trustee filed objections and more specific objections to Paragraph 5 and later paragraphs of said claim, which claim and objections were reported by Special Master Carl R. Chindblom to the Judge for disposition, and preliminary hearing was had on July 14, 1937, and continued for disposition on September 14, 1937.

407 6. Thereafter on August 30, 1937, City National voluntarily came before the Judge and obtained permission and filed in this Court its petition and report for settlement and approval of its accounts about Granada Properties, claiming to be former Trustee by appointment of Superior Court of Cook County, in possession and control of Debtor property and affairs prior to May 17, 1937, when the Court Trustee had possession; whereupon the Judge of this Court ordered all parties in interest to plead thereto within 10 days. Accordingly on September 9, 1937, Weightstill Woods, as Court Trustee, filed his answer and counterclaim by way of supplement to said objections and as further defense to the claim filed June 23, 1937, and to the petition filed August 30, 1937, by City National.

7. On September 14, 1937, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer claiming to be a Granada first lien Protective Bondholders Committee under deposit agreement dated April 25, 1933, filed their petition for an allowance of fees and expenses and also a separate petition was filed asking reasonable compensation for their attorneys, Defrees, Buckingham, Jones and Hoffman. Said persons by their own voluntary petition had come on May 24, 1937, and were given leave to intervene to present a plan which as modified was confirmed on July 14, 1937. These petitions by said Committee for fees and allowances, were referred to Special Master to take and report evidence, and upon the coming in of his report, the Judge ordered that hearings upon said petitions be consolidated.

with the main case upon City National accounting petitions, and be made a part of the record to be used in preparing findings and briefs for consideration by the Court.

Pursuant to said plan, all the old bonds and all old corporate stocks, have been cancelled and surrendered, and new participation certificates issued in April, 1938.

The new certificates were issued to individual owners; they were not issued to said Committee. Charles S. Tuttle died on September 29, 1938.

8. A unit record has been made up by agreement of counsel, consisting of three volumes of evidence and exhibits, which has been certified by the Court and filed as the record of this consolidated case now under consideration by the Court; and one volume of assembled pleadings has been filed with the Clerk of this Court. Opinion by the Court was filed in writing and directions given for preparation of these findings and for a decree.

II. Jurisdiction.

9. The Court has, by virtue of said pleadings, by voluntary action of the parties and orders, obtained exclusive jurisdiction of all the property, assets, business and affairs of the Debtor wherever located; and by virtue thereof and the facts herein stated, the Court has jurisdiction of the subject matter of said pleadings; and has jurisdiction of the persons of City National Bank and Trust Company, a corporation, and said Bondholders Committee and their counsel; and has full authority to enter a decree for the payment of the moneys due to Debtor Estate and to Court Trustee, as claimed by said answer and counterclaim filed herein on September 9, 1937, and as supported by the evidence in the record. Hearing of evidence before the Judge in open court lasted from day to day for about a month. The assembly, consolidation and joinder of claims, pleadings, hearings, evidence and proceedings now here for disposition has been properly made either by request and agreement by the parties, or after hearing of all parties, by appropriate orders by Judge of this Court.

408 10. City National, Bondholders Committee and their counsel by pleadings filed, agreements made and evidence offered before the Judge in open Court, have all consented to and conducted here a plenary litigation.

They have asked the Court to decide a plenary accounting in equity. Upon this record made by pleadings, petitions and evidence, said respondents cannot be permitted to say that any of them do not consent and cannot be permitted to say that the proceedings were or are summary. These proceedings are plenary. The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide.

III. Findings of Fact.

From pleadings, admissions and evidence of record, the Court finds these essential facts:

11. In 1924 one Fred Mateer proposed to build a number of hotels near Arlington Place, Chicago. To finance the enterprise he secured the assistance of Chicago Trust Company. That Company had a real estate department which was financing similar properties. This real estate department was in charge of three men named Cody, Lewis H. Riddle and other persons. Chicago Trust Company as a house of issue financed these hotels with construction loans consisting of bonds in small denominations sold to the public. A copy of the prospectus upon which the Granada bonds were sold is in this record. It specifically states that the furniture and fixtures at Granada are part of the security for the bondholders' money, in addition to the real estate at Arlington Place consisting of land and hotel building.

12. This Granada Hotel includes many unusual features. It was to be and became the central plant to serve several other hotels; two of these hotels were: the Arlington Hotel at 530 Arlington Place, just across the street from the Granada; and Lincoln Park Manor Hotel on Fullerton Avenue, just across the alley to the rear of the Granada Hotel. In 1924 the Basement of Granada was constructed and equipped and covered over. With each of said hotels it was connected by a tunnel. This Granada Basement houses the machinery for supplying heat, hot and cold water and refrigeration service to Arlington Hotel and Lincoln Park Manor Hotel. The pipes that carry these services go through a tunnel under Arlington Place to Arlington Hotel, and through a tunnel under the alley to Lincoln Park Manor Hotel. In 1924 the

Arlington Hotel was built, and the Lincoln Park Manor was built, each having a separate corporation and a separate construction bond issue. Mr. Mateer owned the corporate stock. After they were in operation and using the machinery and services from the basement of the Granada, the Granada itself was built and the temporary covering over the basement was taken away. For several years there was in the Granada a Central telephone service, and a Central lighting service, a central library and other services for the Granada Hotel, the Arlington Hotel, the Lincoln Park Manor Hotel and other Hotels. These special services from time to time have been discontinued. But when these proceedings began, the Granada property continued furnishing heat, hot and cold water, and refrigeration services to the Lincoln Park Manor and the Arlington property.

13. The plan of Mr. Mateer was to have, and for many years he did have extensive social life at the Granada as a Central place for the assembly of guests and prospective guests from the several hotels which he had built 409 and was operating as a business unit. In order to do that, the plan of construction of Granada included a large amount of public space on the street floor of Granada including an extensive solarium, writing-room, ball-room and a very large lobby and extra office space. Mr. Mateer also began an inter-hotel publication called "Topics" which ran monthly until July, 1937 for two or more of said Hotels. All of these hotels feature small apartments. They are similar in layout and physical construction, and seek permanent rather than transient occupancy.

14. Granada Hotel Corporation, an Illinois Corporation (not the debtor), was organized and signed the bonds marketed in 1924 by the Chicago Trust Company as a house of issue. Contrary to prospectus and agreement, there was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan. Albert Pick & Company of Chicago supplied the furniture and fixtures for the hotel on open account and chattel mortgage. They charged Granada Hotel Corporation more than One Hundred Twenty Thousand Dollars (\$120,000). What became of that much furniture is not shown by the record.

15. By 1928 Pick and Company had collected money due it on open account, and was asking balance payment for the furniture described in this chattel mortgage. By

this time the Codys and Louis W. Riddle and associates had separated from Chicago Trust Company and had organized the Cody Trust Company as a new house of issue. There was need to protect Chicago Trust Company and all persons who had participated by placing their names in the prospectus to the bondholders in 1924.

16. In 1928 a refinancing of the Granada situation was carried out by a new first mortgage and a larger second mortgage than had been used in 1924; Two Hundred Thousand Dollars (\$200,000) of the new first mortgage issue was sponsored by Chicago Trust Company; and the remainder of the first, being Three Hundred Twenty-Five Thousand Dollars (\$325,000) and all of the second being Three Hundred Sixty Thousand Dollars (\$360,000) was sponsored by Cody Trust Company. Chicago Trust Company was Trustee named in both trust deeds for the new financing. The increase over 1924 was about Three Hundred Thousand Dollars (\$300,000). No one has shown what became of that additional money. A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel. Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing.

17. In 1928 Albert Pick & Company, in the Circuit Court of Cook County reduced its chattel mortgage to a decree, and advertised a sale of some personal property at the Granada Hotel described in this chattel mortgage. Cody Trust Company sought to stop this sale. It had an employee or nominee named Wenstrand. He made claim to live in the State of Iowa, and on that claim filed a suit in this Court to enjoin sale by Pick under its chattel mortgage decree. Wenstrand claimed that he had purchased all personal property at Granada from the buyer at a sheriff's sale upon a judgment obtained by a fuel merchant at Chicago, who had furnished oil at Granada and had taken a judgment upon non-payment of his bill. In the Wenstrand suit in this Court, bonds were given of \$5,000, \$20,000 and finally \$40,000 to stay the sale.

18. Judge Wilkerson found against Wenstrand and dismissed his suit. An appeal was taken to the Circuit Court of Appeals. That Court affirmed Judge Wilkerson. (38 F. 2d 25, March 10, 1930.) The matter was

taken to the Supreme Court of the United States, which Court refused to review the previous ruling. (281 U. S. 768, June 2, 1930.) When the mandate was returned to Judge Wilkerson, suggestions of damages were filed by Pick upon the injunction bonds, and hearings were had which led to a Master's Report of evidence. Damage of Fifty Thousand Dollars (\$50,000) were asked against Wenstrand and against Indemnity Insurance Company of North America, the surety on the Wenstrand Bonds.

19. While these damage proceedings were pending Albert Pick & Company again advertised its sale and again sought to take some personal property out of the Granada Hotel. To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue. (Interest on Granada first mortgage bonds was paid until 1932.) The Superior Court issued a restraining order. Pick came into that proceeding to assert its claim under its decree in the Circuit Court. Eventually the Superior Court authorized Pick or Successors to take away from the Granada Hotel some unattached furniture; such as chairs, tables, and lamps. This order was executed about August, 1930. The Court reserved the question whether the in-a-door-beds, carpets, china, cabinets and other items were fixtures and part of the real estate. In 1933 this reserved question was determined in favor of Albert Pick and Company after an appeal to the Appellate Court of Illinois (269 Ill. App. 484), and a certiorari to the Supreme Court of Illinois.

20. When the Superior Court determined that some loose furniture might be taken away by Pick, the order was executed by removal from one apartment at a time, new furniture being supplied from another source by purchase for the hotel; as part of this action by direction of those initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars (\$35,000). That Company was not a business firm. It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The bankers thus made their own collateral. On this contract from time to time payment from Granada moneys have been made by which said contract was reduced to Three Thousand Dollars (\$3,000) when

these proceedings were begun. For this sum claim was made and allowed in this Court in January 1938 in favor of Continental Illinois National Bank and Trust Company, who contend the plan approved in this Court provides for payment of said sum in cash. Respondents prepared and presented said plan to this court.

Later, on January 17, 1939, this Court vacated said allowance, but gave permission for said Continental Bank to file a claim to be heard on the merits.

21. Chicago Trust Company and the Central Trust Company consolidated in July 1931 to become the Central Republic Bank and Trust Company, whereby that company by statute claimed to be successor trustee under the 1928 trust deeds. Its name later was changed to Central 411 Republic Trust Company, and on October 5, 1932, City National Bank and Trust Company was organized to take over its deposit banking business.

22. As a new hedge against the failure to pay off Pick claims out of the 1924 trust deed (which security was a construction bond issue) the Cody Trust Company and their Attorneys, in the spring of 1929 organized a new Illinois corporation, Granada Apartments, Inc. To this new Granada Apartments, Inc., an Illinois corporation, which is the Debtor in these present reorganization proceedings, sundry assets of old Granada Hotel Corporation were conveyed, but the new corporation assumed only the 1928 refinancing first and second mortgage bond issues. There was no assumption (by Granada Apartments, Inc.) of furniture indebtedness. This was expressly excluded along with claims of all the general creditors of the Granada Hotel Corporation. Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness.

23. This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control. Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928. This was never done. When the Thuma partial foreclosure was filed June 10, 1930, the Chicago Title & Trust Company was appointed as nominal receiver, but the order provided it should not disturb the Cody management, then in control of Granada Hotel and revenues.

When in 1933 it had been finally determined by State Courts that the successor of Pick could remove the in-a-door beds, china cabinets, carpets, etc., and they wished to remove the same, an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys. Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed. To carry out this agreement Thirteen Thousand Dollars (\$13,000) more money was taken from the Granada treasury, and Eleven Thousand Five Hundred Dollars (\$11,500) was borrowed from Indemnity Insurance Company of North America.

24. This Insurance Company as surety on the Wenstrand bonds in this Court and on similar bonds in other appeals about the Pick litigation, was defending against claims by the successor Albert Pick & Company for damages on said several bonds. Indemnity Insurance Company of North America (I. I. C. N. A.) wished to be released from all those damage claims and suits. A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money. The money was furnished by surety on said damage bonds, Indemnity Insurance Company of North America. That is a surety company; it is not a banking firm. From the moneys thus obtained, Two Thousand Dollars (\$2,000) was paid to Central Republic Trust Company for Defrees, Buckingham, Jones & Hoffman, as attorneys' fees, and the balance was paid to the successor of Albert Pick & Company. Services of said attorneys were performed to protect persons other than the bondholders. Since then Seventy-five 412 Hundred Dollars (\$7500) additional has been paid from

Granada funds in reduction of the receiver's certificate, so that it now has a face balance of Four Thousand Dollars (\$4,000). All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders. Respondents made said payments.

25. For said \$4,000 face balance and interest a claim was made in this Court against Debtor estate. That claim No. 8 by Indemnity Insurance Company of North America has been denied and disallowed by this Court. The opinion and findings of this Court in that matter as filed July 13, 1938

is incorporated as part hereof. The Superior Court was not informed about the damage claims and proceedings on the Wenstrand and appeal bonds. Until in this present litigation original documents were produced from the files at the home office of Indemnity Insurance Company of North America, it was not known (to any Court or Granada creditors) that officials of Cody Trust Company and Wenstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known (to any Court or to Granada creditors) that Wenstrand and others are indemnitors upon all the Wenstrand bonds in this Court. The Superior Court Judge was not told that Wenstrand and others had signed the 1928 refinancing first mortgage bonds as makers thereof; that Court was not informed that by said payments of Granada money, all Pick claims against said third parties upon injunction and appeal bonds, were settled, cancelled and released by Pick Successor.

26. When we look at the whole evidence as equity looks at evidence, we reach the same results. Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record. A repetition at this time is deemed unnecessary. But the outstanding facts are that Wenstrand had signed the first mortgage bonds; that Wenstrand, Riddle and Cody by secret agreement in writing off the Court records were indemnitors to I. I. C. N. A.; that I. I. C. N. A. had been told that the Wenstrand suit was in reality for Cody Trust Company; that Cody Trust Company had agreed to remove the Pick chattel lien as between Cody Trust Company and Chicago Trust Company; that Codys and the Chicago Trust Company both had represented to the bondholders and the public through the mails in 1924 that furniture and personal property at Granada was part of the security; and that Cody Trust Company and Chicago Trust Company had made the same representation again in 1928 in relation to the refinancing; and effective soon thereafter these facts were well known to the Central Republic Trust Company and City National Bank & Trust Company, and were available to or known by Chicago Title & Trust Company and by I. I. C. N. A. and its attorneys. By their efforts the bondholders money paid a second time for furniture at Granada.

27. Until January 12, 1934, Chicago Title & Trust Company was only a custodian of net rents paid to it, a mere bookkeeper. The order that day (four months after the receivership certificate was issued) for first time directed it to take possession of the property. Before that it was forbidden by court order to do so.

28. The last interest paid to any bondholders was to pay first mortgage coupons for 1931. The money misappropriated to buy furniture a second time and to pay to I. I. C. N. A. and sundry litigation in many courts stopped completely all payment to the bondholders. Creditors 413 were hindered, delayed and defrauded. None has been paid since. Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations assisted in this breach of trust, knowing that there would not remain money to pay the bondholders.

29. All the litigation prior to August, 1933 had affected only the second mortgage trust deed. In that month the cross bill to foreclose the first trust deed was filed; and immediately this receivership certificate was asked for. Plainly the cross bill was filed for that purpose. Decree of foreclosure was not entered until December 18, 1936, which was more than forty months later.

30. The decree dated December 18, 1936 and orders of 1933 and later in said case 519151 for foreclosure in Superior Court are all void for want of good faith. Granada Hotel Corporation (predecessors of the debtor) was dissolved by the Superior Court of Cook County, Illinois, in cause Numbered 50985, upon due complaint by the attorney general of Illinois; and decree entered for dissolution May 17, 1930. All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill. All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else. The supposed chattel mortgage lien was a mere shield and secured no actual independent debt. The Superior Court Proceedings are void also for nondisclosure and for want of a true trustee party plaintiff. By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds.

31. Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceed-

ing in the Superior Court. This does not help I. I. C. N. A. nor respondents. Some attorney for I. I. C. N. A. did participate in the Superior Court proceedings with attorneys for respondents, by signing numerous stipulations there; whereby it was charged with knowledge of what could be ascertained by inquiry. If it were true that Shanner was concerned only with the damage claims in the Wenstrand suit in this Court, such fact is an admission that the main and controlling purpose of I. I. C. N. A. in advancing the Eleven Thousand Five Hundred Dollars (\$11,500) was to save itself from liability in said damage suit and secure release of same. This was accomplished by a stipulation for dismissal filed in this Court signed not only by Albert Pick & Company, but also by respondent and International & Industrial Securities Corporation, to whom this Granada money was paid.

32. Nominees of Cody Trust Company physically and actually operated the property until January, 1934. The Cody Trust Company went into receivership about December, 1933, whereupon on January 12, 1934 an order was obtained from Superior Court directing the Chicago Title and Trust Company to disregard the order of June, 1930, and to take possession and control of the property. Under this order Chicago Title & Trust Company did purport to operate the property for two months. But in March, 1934 this short receivership was ended by an order entered on a stipulation of certain parties interested in the foreclosure in the Superior Court, and the Receiver was directed to turn over the hotel property and certain funds and securities to Central Republic Trust Company as Successor Trustee in possession under the first lien trust deed made in 1928. At that time school tax warrants owned by Granada needlessly were sold at a discount. The order allowed Chicago Title and Trust Company Three Thousand Dollars (\$3,000) for services.

33. At that time and until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal Trustee. From October, 1932 the City National assumed and exercised real control over Granada affairs. When the Central Republic Trust Company went into receivership an order was secured in the foreclosure proceeding in the Superior Court; purporting to have the Central Republic Trust Company and its Receiver resign as suc-

cessor trustee under the 1928 Granada Trust Deed, and on Motion of Granada Bondholders Committee to appoint City National Bank and Trust Company as an appointed successor trustee under the trust deed. The Bondholders Committee filed a petition requesting that action by the Court. Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void.

34. This Bondholders Committee had no will of its own. It had been organized in April, 1933 by and among minor officers, employees and nominees of City National Bank and Trust Company. From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession operated the Granada Hotel property. City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review (269 Ill. App. 484), (297 U. S. 225).

35. From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company. Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937. It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and to keep informed the Cody Trust Company and their successors in interest. When the Court took possession of the property, claims were filed upon Granada bonds of the 1928 issue of second mortgage, by various Chicago Banks who held them as collateral for loans to Chicago Trust Company and Cody Trust Company.

36. All these facts were known or available to City National. The records show that the attorneys whom they now retain, have been active in all of these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or

any successors or receivers for them, or Wenstrand
415 and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada bondholders.

37. All these litigations for ten years were conducted and financed with Granada money, and each of them successively was a new step to try to stop execution of the judgment and decree secured in 1928 by Pick under chattel mortgage. This judgment was for money which the bankers (who initiated the bond issue and sold the bonds) had owed since 1924. The whole ten years of litigation grew out of the fact that Chicago Trust Company and the Codys and their attorneys failed in their promise to the bondholders in 1924 and 1928 to remove all debt and to tie in the furniture and equipment of the Granada Hotel as part of the security which the bondholders purchased. The property and the bondholders have received the punishment. It has taken an extensive hearing before this Court to assemble far flung documents and court records and to present this long trend of evasions, but when assembled the plan of these various trust companies and these attorneys to throw the loss either on Pick or the bondholders, rather than where it rightfully belonged is very plain. By intricate legal devices, complicated financial bookkeeping, stipulations, petitions and court orders, it finally came about that the bondholders' money has been used the second time to replace some furniture which Pick took away, and purchase some fixtures from its successor. In the face of the assembled evidence, reduced here to record, City National Bank and Trust Company claiming to be trustee, and its counsel, still stoutly maintain they have no responsibility, and that their course of action is correct in having furthered this enterprise which has continued for ten years to harass and distress this property and the people who furnished the money to build it.

38. At date of its charter October 5, 1932, City National took over from Central Republic Bank and Trust Company and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division. That personnel is a "new-business" promotion device. It is a commercial machine to secure new trusts for the trust department at City National. The

evidence shows that through this device the City National has obtained some 425 corporate reorganizations for its trust department. The City National pays the personnel of the Corporate Reorganization Division, expecting to be reimbursed eventually out of such trusts as are obtained, and from which collections for trust services can be made. When information is received that a default has occurred in a corporate issue, the method of operation is for City National to organize a bondholders committee. The names are chosen from among employees of Corporate Reorganization Division or other employees nominees or officers of City National.

39. This method was pursued with relation to Arlington Apartment Hotel property and Lincoln Park Manor Hotel property. The Arlington has been reorganized through a foreclosure in the Circuit Court. Arlington, Inc., is a new corporation set up for that property. The Lincoln Park Manor is still in process in that Court. For it there is a similar City National Bondholders Committee. City National was trustee for both Arlington and Lincoln Park Manor.

40. In the case of Granada, Cody Trust Company had the bondholders list for the junior mortgage issue, and Three Hundred Twenty-five Thousand Dollars (\$325,000) of the first mortgage issue. The committee when formed by City National included representation from Cody Trust Company. Two secretaries were appointed for the committee, one with relation to the bondholders list which City National had from the Chicago Trust Company files; and the other to correspond with persons on the list from the Cody Trust Company files. The committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department. The minutes produced in this Court to show what action was taken by the Granada Committee; do not show that any constructive action was ever taken looking toward a reorganization of the Granada property. The only matter recorded prior to discussion of the present proceedings in this Court was refusal to accept an offer of twenty cents per dollar face value for the bonds on deposit with the Committee and City National as its depository.

41. In the minds of City National witnesses there was no distinction between the Committee and the Reorganization Division of the City National, and their witnesses could not distinguish the expenditures by the Committee

from expenditures by the City National as Trustee. The same personnel would pass upon any matter that came up either to the Committee or the Trust Department. The same individuals who used their personal names to persuade the public to deposit bonds, were the persons who handled the business for City National after it had become depositary, or fiduciary in some other capacity. The trust relationship was treated as a business to be obtained and conducted like any other commercial operation obtained by ingenious form of advertising. Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National, and were interlocking (the two top individuals in the Corporate Reorganization Division being members of all three committees) no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit.

42. If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada. Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars (\$4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract.

417 43. The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars (\$60,000) when these proceedings were begun. At the same

time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel. This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930. That contract remains in force at this time. After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937; Arlington, Inc. is officered and controlled by City National employees, who have done this additional wrong to Granada.

44. Since the Granada property was built in 1924, one set of attorneys have prepared the financial papers and have represented Chicago Trust Company, Cody Trust Company, Thuma, Wenstrand and Hall as agents and nominees for said companies, and also for Central Republic Trust Company and the Bondholders Committee for Granada property. Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and continuing these various litigations, and to protect the bankers who initiated bond issue and sold the bonds and attorneys from their own wrongs and mistakes.

45. None of the law suits have accomplished any appreciable good for the debtor estate; none of them has added to or increased the assets which came into the care of this Court. On the contrary said parties have accomplished delay and obstruction to the prompt clearance of business affairs of debtor estate. They have produced great uncertainty, tax delinquency, discredit, waste, damage, loss, have prevented prompt or proper action by the State Courts and this Court, and have delayed, obstructed and harassed the Court Trustee of this Court in making either a normal or prompt disposition in this Court of the affairs of Debtor Estate. By law of Illinois all said transactions

are null and void. There was no bona fide purchasers for a present fair equitable value at any of these situations. In none of them was a fair consideration given to debtor estate for its money. All these acts were done with knowledge that debtor was insolvent. After 1929 the property was a bondholder's equity; because the bankers concealed and repudiated their own contract and refused to perform their duty to the property and to the bondholders.

46. City National (self-appointed by its own committee) claimed to be trustee under the 1928 first mortgage trust deed, but it dealt with Debtor property as though it were the general owner of all Granada affairs. The fullest control was taken over all manner of personal property including notes and other securities representing general moneys due to the Debtor Estate. In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court.

When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order; but if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court Control. In the Harris vs. Tuttle litigation (which was a prior reorganization case) in this Court, the Circuit Court of Appeals, and the United States Supreme Court (297 U. S. 225), they successfully maintained that position. To pay themselves for doing so they appropriated about \$4,000 of Granada money. In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937 in an effort to thwart and stay all action by this court.

47. The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not make slight changes in the rentable space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all

in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure; they claim or disclaim as they think is expedient at the time.

48. City National Exhibit "X" prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel. This document was prepared by Defrees, Buckingham, Jones, and Hoffman, attorneys. They are in this Court in this accounting litigation, representing City National, the Granada bondholders Committee and a separate accounting suit against Arlington Inc. The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer. They filed the Thuma partial foreclosure on the Granada property in 1930, which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National. At that time these attorneys withdrew as counsel for Thuma and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders Committee, and then for City National. These attorneys have represented throughout, the Bondholders Committee for the Granada, the Arlington and the Lincoln Park Manor properties, and likewise the City National as Trustee for these properties.

49. Neither the attorneys nor the Bondholders Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties. Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties, because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed. It is

419 plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May 1929, when Granada Apartments Inc., was organized. From that time until now these properties were bondholders equities. No per-

son in a confidential relationship to one of these properties could rightfully represent another.

50. The record does not disclose that any information ever was given to the bondholders or creditors of Granada, about the receiver's certificate, or any moneys used in furniture litigation; or that the City National as Trustee and the Bondholders Committee and the Attorneys, occupy similar relationships to the Arlington property, and to Lincoln Park Manor property; nor does it appear that any bondholder or creditor knew that the Granada Bondholders' Committee was merely a business getting device for City National without a will of its own; nor does the record show that any bondholder or creditor of Granada knew that City National and the Bondholders' Committee were employing said attorneys who had formerly represented adverse interests and currently were represented adverse interest. Continuously since the Committee was organized in 1933 these adverse situations of interests have existed and were fully known to the Committee, to the City National and to said counsel, all of whom have committed breaches of trust in failure to make full disclosure and failure to resign from all but one of said relationships. The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for any services.

51. By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the debtor. Respondents brought about that result. After 1931 no interest was paid to first or second mortgage bondholders: the tax bill unpaid rose from about \$30,000 in 1931 to about Sixty Thousand Dollars (\$60,000) in May 1937.

52. For any matter or action wherein City National, its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same.

53. The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to re-

ceive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars (\$1,000) per month.

54. Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustee with reasonable interest.

55. The evidence shows that the following items are due from City National Bank and Trust Company to Debtor Estate and the Court Trustee, together with interest at five per centum on each item from the date of its accrual and that the accounting by City National should be surcharged therewith:

- 420 1. All costs of this proceeding including trial counsel fees for Court Trustee and cost of special Auditing and Engineering services, expense for exhibits and witness fees, and extra services of the Court Trustee caused to the Debtor Estate, in such sums as the Court may determine upon hearing as to same.
2. Restoration of incinerator (waste and neglect) August 1937\$ 500.00
3. City National without making a substantial adverse claim, refused to pay over cash funds pursuant to Court order and demand made by the Court Trustee May 1937.....\$ 1,990.86
4. Without authority City National consented to and made wrongful payment from rentals upon receiver's certificate\$ 7,500.00
And also cause payments to Pick successor August 1933\$13,000.00
5. City National charged for management fees as trustee in possession; never earned, before May 1937\$11,365.42
6. Without authority City National paid court costs, fees and legal expenses never earned, February 1936\$10,186.65

7. City National paid valet commissions to Arlington, earned by Granada rental space, before April 1937\$ 250.00
8. City National without authority wilfully reduced and failed to collect or pay over rentals due from Arlington for inter-hotel services from January 1, 1933.....\$19,170.00
9. City National neglected and failed to seek tenants for ballroom, solarium, writing room and director's room, all space adjacent to lobby\$10,968.00
10. Needless tax penalties (admitted by City National petition) resulting from failure to apply funds to taxes, before May 1937.....\$ 5,000.00

56. The evidence shows and the Court finds that City National was not lawful trustee for Granada; but if it were, then for its services as trustee it should receive not exceeding five hundred dollars, and should receive nothing for out-of-pocket expenses. Likewise the bondholders committee has not justified its claim for out-of-pocket expenses, and if it were entitled to receive any pay for services in these proceedings or for any previous services about Granada matters, the maximum thereof would not exceed \$1,000 for its fees; \$1,150 as maximum allowance for depositary fees; and a maximum of \$2,285.21 for out-of-pocket expenses; likewise the attorneys and counsel for City National and its Bondholders Committee, if they were entitled to receive any compensation for services in these proceedings or for any previous services about Granada matters, the maximum thereof would not exceed \$4,500, in addition to cash payments made to them. The demands of respondents all are unreasonable and inequitable. Any award that should be made by reason of their services, could be credited only to account of City National.

57. The Court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders Committee and by their attorneys and counsel; the Court finds that all equities are with the Court Trustee; but the Court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other and said named parties to this accounting (court trustee, City National, committee, and attorneys) are left

as they now are, each to pay its own costs and charges, and no cash recovery to be allowed or made by these findings and decree.

421 58. The Court finds that the Claim No. 9 and all petitions by City National Bank and by the Bondholders Committee and its counsel for allowances shall all be denied, disallowed, and dismissed for want of equity; and that the Court Trustee shall recover against City National, the Bondholders Committee, or its counsel only by way of recoupment.

IV. Conclusions of Law.

The Court records that the following Conclusions of Law are applicable to this case:

59. The question here is not whether duress in the legal sense was exercised by the City National, Committee and counsel, or either of them, but the question is whether under all the facts and circumstances of this case an unfair advantage was obtained by them; or either of them, through the exercise by them of superior or undue influence over the Debtor, made possible by reason of the necessities and distress of the Debtor and nominal stockholders. Respondents undertook to perform a fiduciary relation. Such undue influence of this character is remediable in equity in this case.

60. The Respondents having induced through the exercise of undue influence over the Debtor, the Superior Court order for City National to be Trustee and the arrangement provided thereunder, and thereby having obtained control and management of the Debtor's property and assets, are bound to account: and are charged as Trustees do son tort for all the losses suffered by Debtor by reason of such management and control, and are liable to deliver to the Trustee appointed by this Court, such property assets and business including good-will, in the same condition they would have become under prudent owner management, if it had been exercised ever since when respondents obtained control and dominated the management.

61. By reason of the circumstances under which City National assumed to be trustee, the control and management of the Debtor was placed in their hands to the exclusion of the exercise of the functions and powers of the constituted officers and directors of the Debtor.

62. Respondents having obtained control of Debtor's

property and assets under said arrangement, assumed the duty to decide whether they would operate the business or close it down. If they determined to operate it, they were bound to so operate or carry on the business in a manner that would not deplete its assets, misuse property, nor commit waste.

65. However or in whatever manner respondents obtained control of the management of the Debtor's property, business and affairs, they are bound to account and answer as fiduciaries for any and all losses to business, good-will, depletion of assets or property which resulted during the period from January 1, 1933 to May 17, 1937, due to mis-management or negligent, willful, reckless or imprudent acts.

64. This record proving that the assets, property and business of the Debtor were depleted during the period of respondents control and management, and losses were sustained to a certain amount as shown by the records of the operation of said business, there arises a presumption of liability upon respondents for such losses in evidence before this Court; and the burden then rests upon respondents to show by preponderance of the evidence that such losses resulted or took place by reason of circumstances beyond their control. This they have failed to do.

422 65. Respondents and each of them, are liable to the Trustee in Bankruptcy for the costs and expenses of this accounting; including reasonable fees to counsel for the Trustee and Debtor in addition to their liability at account for other matters.

66. Every fiduciary must act for the benefit of all parties in interest. The question of good faith of a trustee is always before the Court. Courts will correct all acts of a fiduciary and all associates, which are not for the best interests of the Estate. All acts of a Trustee and its associates which are in derogation of the trust power and duty, are ultra vires and void in this court of equity. All persons have duty to observe such limitation of fiduciary power.

67. Legality is not equity, nor a defense. To use the forms of law to cloak fraud or misuse of funds or property, only increases the wrong done. Lawsuits as protective cover for fraud are as improper as transfers. Administrative or Court approval to an act, without adequate disclosure and fair dealing to absent beneficiaries who have no independent representation, will be treated

as void. All parties who participate will be compelled to make the estate whole by full restoration.

68. Anyone who intermeddles with an estate or who assists anyone else in doing so, thereby becomes obligated to replace all funds or property lost or otherwise misappropriated, even though one or more of said parties be mortgagee or trustee in possession.

The tenure of an Indenture Trustee in possession lasts only until the debt is paid; hence, the strictness of its duty to apply all funds to that purpose; it cannot speculate with personal property of any kind.

69. The failure of counsel, to advise and the City National to pay over and deliver moneys, documents and property on hand May 17, 1937, upon the demand made by the Court Trustee, is not only a contempt of the order of the Court entered that day, but is a direct violation of section 268 of the National Judicial Code, and subject to the penalties therein provided.

70. The Court Trustee should recover on counterclaim. In such cases as we have at bar Equity awards interest costs to the Estate, and against respondents.

71. The judge deems that application of chapters II and X of Amendment to Bankruptcy Law Approved by the president June 22, 1938, to this litigation is practical and desirable, the decree herein shall so provide.

72. The foregoing findings by the Court are made, approved and filed of record this second day of May, 1939.

Barnes,
Judge United States District Court.

To the making of which said findings of fact and propositions of law, and to the failure of the court to make those findings of fact and propositions of law as were submitted and filed by the Committee and City National Bank & Trust Company, as Trustee, the Committee and City National Bank and Trust Company, as Trustee, objects and excepts.

Entered
May 2,
1939.

423 And afterwards, to wit, on the 2nd day of May, A. D. 1939, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Decree.

424 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption--65811) * *

DECREE.

At Chicago, Illinois this second day of May 1939 before said Court, Hon. John Peter Barnes, Judge presiding:

This cause again came to be heard at May term, upon Paragraphs 5 and thereafter of Claim No. 9 filed June 23, 1937 by City National Bank and Trust Company of Chicago as amended; and upon objections and more specific objections thereto in writing filed by Weightstill Woods as Trustee in Bankruptcy herein, and upon petition to settle accounts filed August 30, 1937 by said City National; and upon the answer and counterclaim by Court Trustee filed September 9, 1937, and reply by City National Bank and Trust Company to said counterclaim, and upon the evidence offered and received in open Court on behalf of said Trustee in Bankruptcy; and upon the evidence offered and received in open court on behalf of said City National, Bondholders Committee and their counsel; and upon the report of referee as to evidence taken upon petitions for fees and allowances; and upon the briefs, and suggestions made by the parties, and upon arguments of counsel before the Judge in open court for the respective parties; and upon the orders of this Court consolidating all said matters for disposition; and the Court having made and filed with the Clerk of this Court the written opinion of the Court, and also findings of fact and conclusions of law by the Court, upon the evidence
425 and issues involved; and the Court being fully advised in the premises:

It Is Ordered And Decreed As Follows:

(1) That said paragraphs 5 and thereafter of Claim No. 9 by said City National against the Debtor, be wholly disallowed and dismissed for want of equity;

(2) That all petitions and claims for expenses and al-

lowances by said City National, Bondholders Committee, and their attorneys and counsel, be now wholly disallowed and dismissed for want of equity.

(3) That the petition by said City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(4) That for all other purposes said petition by City National be dismissed for want of equity;

(5) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937, be sustained and allowed in favor of Court Trustee in this cause, that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bondholders Committee and their counsel of record without prejudice, however, to the right and power of the court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(6) The Court Trustee does not recover herein additional sums of money against City National, the Bondholders Committee, or its counsel.

(7) The judge deems that it is practicable and desirable, and the Court decrees that application of Chapters II and X of Bankruptcy Law as amended by act of Congress approved by the President June 22, 1938 426 shall be made to this litigation. Such application is hereby made for the promotion of justice.

Enter: May 2 1939.

Barnes,
Judge United States District Court.

Exceptions allowed to City National Bank and Trust Company and to Bondholders Committee and their counsel. Exceptions allowed to Court Trustee with reference to Paragraph 57 and 58 of findings of fact, and to paragraphs 3 and 6 of this decree.

Barnes.

439 And on, to wit, the 1st day of June, 1939, came the City Natl. Bank & Trust Co. of Chicago, etc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal in words and figures following, to wit:

Filed
June 1,
1939.

440 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

In the Matter of
Granada Apartments, Inc., a
corporation,
Debtor.

City National Bank and Trust
Company of Chicago, individ-
ually and as Successor Trustee,
et al.,

Appellants,

vs.

Weightstill Woods, Court Trustee,
Granada Apartments, Inc., a
corporation, Granada Apart-
ments Hotel Corporation, a cor-
poration, Florence Newman, Ed-
win Rosenberg, Charles Cun-
ningham, as Receiver, Maurice
M. Kraft, Stephen L. Ingersoll,
as Agent for Cordelia L. Inger-
soll, as Executrix of the Estate
of Stephen A. Ingersoll, De-
ceased, Edla Christiansen, Emil
W. Christiansen, G. R. Curnock,
Reconstruction Finance Corpo-
ration, a corporation, Indemnity
Insurance Company of North
America, a corporation, E. W.
Wenstrand, Continental Illinois
National Bank and Trust Com-
pany of Chicago, a corporation,
Charles H. Albers, as Receiver,
Harris Trust and Savings Bank,
a corporation, I. Gordon, J.
Rose, Sam Harris, M. Bernard
Greenberg,

Appellees.

In Proceedings for
the Reorganization
of a Corporation.
No. 65811.

NOTICE OF APPEAL.

Notice Is Hereby Given that City National Bank
441 and Trust Company of Chicago, individually and as
Successor Trustee under indenture securing Granada

Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the following portions of the order entered in the above entitled cause on May 2, 1939, which ordered and decreed in part as follows:

A. That paragraphs 5 and thereafter of Claim No. 9 by City National against the Debtor be wholly disallowed and dismissed for want of equity.

B. That all petitions and claims for expenses and allowances by City National, Bondholders Committee and their attorneys and counsel be now wholly disallowed and dismissed for want of equity.

C. That the petition by City National filed August 30, 1937 be allowed only so far that City National be now discharged from making any further accounting as to the matters mentioned in this proceeding.

D. That for all other purposes petition by City National be dismissed for want of equity.

E. That answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of Court Trustee in this 442 cause, that said recovery be effective as a recoupment to extinguish any and all claims at this date by City National, Bondholders Committee and their counsel, without prejudice, however, to the right and power of the court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

and to that portion of said order which ordered and decreed in part as follows:

F. The Judge deems that it is practicable and desirable and the Court decrees that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation. Such application is hereby made for the promotion of justice.

in so far as said portion of said order and decree pur-

ports to make Chapter II and Chapter X applicable generally to said proceedings.

Dated, this 1st day of June, 1939.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,

Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman.

Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
105 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

447 And on, to wit, the 14th day of June, 1939, came the City Natl. Bank & Trust Co. of Chicago, et al., by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points in words and figures following, to wit:

448 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—65811) * *

Filed
June 14,
1939.

STATEMENT OF POINTS.

Appellants contend that the designation of record accompanying this statement of points relates to and includes, within the meaning of Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States, the complete record in respect of the hearings and proceedings which resulted in the decree from which Appellants appeal.

Since said Rules are of recent enactment and since there have been as yet no interpretations of Rule 75 (d), Appellants are unwilling to rely upon their interpretation and therefore they specify the following points on which

Appellants intend to rely on the appeal heretofore
449 taken by them to the Circuit Court of Appeals in and for the Seventh Circuit, reserving, however, the right to contend that no such statement of points is required:

1. The Court erred in making its finding of fact numbered 2 to the extent that it finds as a matter of law that the Federal Trustee is acting "under Chapters II and X of amended law."

2. There is no evidence of record to sustain that part of finding of fact numbered 4 which reads "to defend and is now carrying on this litigation, by order of the Court," and it is contrary to the evidence of record.

3. The Court erred in making its finding of fact numbered 10 to the extent that it finds Chapters II and X of the bankruptcy amendments applicable to this litigation.

4. The Court erred in making its fact finding numbered 12 to the extent that it finds that Mateer owned the corporate stock.

5. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"There was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan."

6. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"They charge Granada Hotel Corporation more than

One Hundred Twenty Thousand Dollars (\$120,000)."
450 7. There is no evidence of record to sustain finding of fact numbered 15.

8. There is no evidence of record to sustain that part of fact numbered 16 which reads:

"The increase over 1924 was about Three Hundred Thousand Dollars (\$300,000)."

9. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

10. That part of finding of fact numbered 17 which reads:

"In the Wenstrand suit in this Court bonds were given of \$5,000, \$20,000 and finally \$40,000 to stay the sale." is contrary to the evidence.

11. There is no evidence of record to sustain that part of the finding of fact numbered 19 which reads:

"To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue." and it is contrary to the evidence of record.

12. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"as part of this action by direction of those who initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars (\$35,000)."

13. There is no evidence of record to sustain that 451 part of finding of fact numbered 20 which reads:

"It was a corporation organized by Cody Trust Officers and their counsel for this one transaction. The Bankers thus made their own collateral."

14. There is no evidence of record to sustain the first sentence of finding of fact numbered 22.

15. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An agreement was made between Chicago Trust

Company and the Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

16. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys."

17. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

18. That part of fact finding numbered 23 reading "To carry out this agreement" is contrary to the evidence.

19. The Court erred in making that part of finding of fact numbered 24 which reads:

452 "A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money," and in not finding that the order was entered not only upon the stipulation but upon a petition duly filed.

20. The Court erred in finding of fact numbered 24 which reads:

"Services of said attorneys were performed to protect persons other than the bondholders."

and in not finding that the services were rendered in fixture litigation in the Superior Court, the Appellate Court and the Supreme Court of Illinois for the purpose of keeping in the building the alleged fixture items.

21. The Court erred in that part of finding of fact numbered 24 which reads:

"All said sums were paid primarily for benefit of persons other than Granada debtor and other than bondholders."

and in not finding that both Pick and the holder of the Receiver's Certificate of Indebtedness had a prior lien on the property.

22. The Court erred in that part of finding of fact numbered 25 which reads:

"The Superior Court Judge was not told that Wenstrand

and others had signed the 1928 refinancing first mortgage bonds as makers thereof;" and in not finding that proceedings for foreclosure were pending in that Court and that those facts were of record.

453 23. The Court erred in that part of finding of fact numbered 25 which reads:

"The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof." in that such finding is wholly immaterial, dealing with a separate matter and in no way binding upon the parties to this litigation.

24. That part of finding of fact numbered 26 reading as follows:

"Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record."

is a legal conclusion not supported by any evidence in the record.

25. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"these facts were well known to the Central Republic Trust Company and City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

26. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"By their efforts the bondholders money paid a second time for furniture at Granada."

27. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"The money misappropriated to buy furniture a second time and to pay to I. I. C. N. A. and sundry litigation 454 in many courts stopped completely all payments to bondholders. Creditors were hindered, delayed and defrauded."

28. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations, assisted in this breach of

trust, knowing that there would not remain money to pay the bondholders."

29. There is no evidence of record to sustain that part of finding of fact numbered 29 which reads:

"Plainly the cross bill was filed for that purpose."

30. The Court erred in making finding of fact numbered 30 as said finding of fact is a conclusion of law.

31. There is no evidence of record to sustain that part of finding of fact numbered 30 which reads:

"All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

32. The Court erred in that part of finding of fact numbered 30 which reads:

"All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

and in not finding that foreclosure proceedings are proceedings in rem that are brought to enforce a lien and are not barred because the maker corporation is defunct.

33. The Court erred in that part of finding of fact 455 numbered 30 which reads:

"By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

and in not finding that the decree in evidence shows that the Court did not undertake to pass on the plaintiff's account but does state the account as between the parties to the litigation and finds what remains due the plaintiff Trustee after allowing all credit on account of rents collected.

34. There is no evidence of record to sustain that part of fact finding numbered 31 which reads:

"Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceeding in the Superior Court."

35. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"Nominees of Cody Trust Company physically and actually operated the property until January, 1934."

36. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"At that time school tax warrants owned by Granada needlessly were sold at a discount."

37. That part of finding of fact numbered 33 which reads:

"From October, 1932 the City National assumed and exercised real control over Granada affairs." is contrary to the evidence.

38. That part of finding of fact numbered 33 which reads:

456 "Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void." is not a finding of fact but a conclusion of law and is erroneous.

39. That part of finding of fact numbered 34 which reads:

"This Bondholders Committee had no will of its own." is contrary to the evidence of record.

40. There is no evidence of record to sustain that part of finding of fact numbered 34 which reads:

"From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession, operated the Granada Hotel property."

and it is contrary to the evidence.

41. That portion of finding of fact numbered 34 which reads as follows:

"City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review." is contrary to the evidence of record.

42. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company."

43. That part of finding of fact numbered 35 which reads:

"Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937."

is contrary to the evidence of record.

44. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"by various Chicago Banks who held them as collateral for loans to Chicago Trust Company."

45. There is no evidence of record to sustain that part of finding of fact numbered 36 which reads as follows:

"All these facts were known or available to City National."

46. The Court erred in making the entire finding of fact numbered 37 as such finding of fact is not a finding of ultimate fact and mere argument.

47. There is no evidence to sustain the second, third, fourth, fifth and sixth sentences of finding of fact numbered 38.

48. There is no evidence of record to sustain that part of finding of fact numbered 40 which reads:

"The Committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

49. There is no evidence of record to support the 458 first four sentences of finding of fact numbered 41 and such findings of fact are contrary to the evidence of record.

50. That part of finding of fact numbered 41 which reads:

"Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National * * * no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

is contrary to the evidence of record.

51. The Court erred in making that part of the finding of fact numbered 42 which reads:

"If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada."

as said statements are conclusions of law and not statements of ultimate facts and are erroneous.

52. That part of finding of fact numbered 42 which reads:

"Instead of reorganizing three properties as a unit * * * City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, 459 by charging off a balance of Four Thousand Eighty Dollars (\$4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933." is contrary to the evidence of record.

53. That part of finding of fact numbered 42 which reads:

"The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract." is contrary to the evidence of record.

54. That part of finding of fact numbered 43 which reads:

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars (\$60,000) when these proceedings were begun." is contrary to the evidence of record.

55. With respect to that part of the finding of fact numbered 43 which reads:

"At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel."

the Court erred in making such a finding of fact without further finding that Lincoln Park Manor is being operated by a State Court receiver and that the rate of compensation paid has been fixed by order of the State Court.

56. There is no evidence of record to sustain that part of finding of fact numbered 43 which reads:

460 "This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."

and it is contrary to the evidence of record.

57. That part of finding of fact numbered 43 which reads:

"That contract remains in force at this time." is contrary to the evidence of record.

58. The Court erred in making that part of finding of fact numbered 43 which reads:

"After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937;"

59. The Court erred in that part of finding of fact numbered 43 which reads:

"who have done this additional wrong to Granada." as such is not a finding of fact but a conclusion of law.

60. There is no evidence to sustain that part of finding of fact numbered 43 which reads:

"Arlington, Inc. is officered and controlled by City National employees."

61. The Court erred in making that part of finding of fact numbered 44 which reads:

"Since the Granada property was built in 1924, one 461 set of attorneys * * * have represented * * * Cody Trust Company * * * Wenstrand and Hall as agents and nominees for said companies,"

without further finding that counsel for City National never represented Cody Trust Company, Wenstrand or Hall in any matter affecting the Granada property.

62. There is no evidence of record to support that part of finding of fact numbered 44 which reads:

"Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and continuing these various litigations, and to protect the bankers and attorneys from their own wrongs and mistakes." and same is contrary to the evidence.

63. The Court erred in making finding of fact numbered 45 in that most of such finding of fact is a legal conclusion and the remaining portions thereof are either not supported by any evidence of record or are directly contrary to the evidence of record.

64. That part of finding of fact numbered 46 contained in the first sentence thereof which reads: "(self appointed by its own committee)" is contrary to the evidence of record.

65. There is no evidence to support that part of finding of fact numbered 46 which reads: 462 "it dealt with Debtor property as though it were the general owner of all Granada affairs."

66. That part of finding of fact numbered 46 which reads:

"In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court." is contrary to the evidence of record.

67. There is no evidence of record to sustain that part of finding of fact numbered 46 which reads:

"When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

68. That part of finding of fact numbered 46 which reads:

"But if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court control." is contrary to the record.

69. The Court erred in making that part of finding of fact numbered 47 which reads:

"The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not make slight changes in the rentable 463 space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure;

they claim or disclaim as they think is expedient at the time."

as such finding of fact contains either legal conclusions or such facts as are stated are not sustained by the evidence of record or are contrary to the evidence of record.

70. The Court erred in making that part of finding of fact numbered 48 which reads:

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel."

as said exhibit was not an estimate but the agreement.

71. There is no evidence of record to support that part of finding of fact numbered 48 which reads:

"The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

72. That part of finding of fact numbered 48 which reads:

"which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National."

is contrary to the evidence of record.

73. The Court erred in making that part of finding of fact numbered 49 which reads:

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties because of the services rendered by the Granada property to the other hotels. 464 Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."

as such finding is not a finding of fact but a conclusion of law and is erroneous.

74. There is no evidence of record to support that part of finding of fact numbered 49 which reads:

"It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enterprise. Control was taken from him in May 1929, when Granada Apartments, Inc., was organized."

75. The Court erred in making finding of fact numbered 50 as the large part of such finding of fact is not a finding of fact but a legal conclusion and such portions

as do state facts are either contrary to the evidence of record or there is no evidence to sustain such findings.

76. The Court erred in making that part of finding of fact numbered 51 which reads:

"By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over Debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the Debtor. Respondents brought about that result."

as such is not a finding of fact but is an erroneous legal conclusion not justified by the evidence.

77. The Court erred in making finding of fact numbered 52 which reads:

"For any matter or action wherein City National, 465 its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same," as such is not a finding of fact but a conclusion of law and an erroneous one not justified by the evidence.

78. Finding of fact numbered 53 which reads:

"The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to receive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars (\$1,000) per month."

is contrary not only to the oral opinion rendered by the Court but to the evidence and there is no evidence of record to sustain the finding.

79. The Court erred in making finding of fact numbered 54 which reads:

"Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustees with reasonable interest."

as it is either a conclusion of law or a finding of fact

not sustained either by evidence of record or is contrary to the evidence of record.

80. The Court erred in making finding of fact numbered 55 and each and every part thereof since it is not supported by any evidence of record and is in every 466 respect contrary to the evidence of record.

81. The Court erred in making finding of fact numbered 56 as such finding and every part thereof is contrary to the evidence; and the amounts there specified are, and each of them is, unreasonably, arbitrarily and unconscionably low:

82. The Court erred in making finding of fact numbered 57 in so far as it provides that City National, the Committee and their counsel are to pay their own costs and charges and are to be allowed no recovery therefor against the estate.

83. The Court erred in making finding of fact numbered 58 which is, in effect, an erroneous conclusion of law.

84. The Court erred in making conclusions of law as stated in paragraphs 59 to 72, both inclusive.

85. The Court erred in disregarding the binding effect of and in erroneously reviewing the following orders and decrees entered in the State Court: (a) order directing issuance of Receiver's Certificate; (b) order directing Chicago Title and Trust Company to make payment on account thereof; (c) order directing Central Republic Trust Company, as indenture Trustee, to assume and to pay balance; (d) order appointing City National Bank and Trust Company Successor Trustee; (e) order approving account filed by O'Connell, Receiver, on behalf of Central Republic Trust Company, as indenture Trustee; (f) order fixing and allowing Master's fees and taxing them as costs; and (g) decree of sale finding and 467 decreeing: (1) City National Bank and Trust Company the duly authorized, qualified and acting Successor Trustee; (2) amounts due it on accounting taken for its own use and benefit (including the fees of the Trustee and its counsel) and for the use and benefit of Bondholders and decreeing a lien on the property to secure payment of the same; (3) the amount due on and the lien of the Receiver's Certificate of Indebtedness; and (4) an accounting between the parties including the trustee-in-possession account down to September 30, 1936.

86. The Court erred in entering and making the following portions of the decree entered May 2, 1939:

(a) That said paragraph 5 and thereafter of Claim

No. 9 by said City National against the Debtor be wholly disallowed and dismissed for want of equity;

(b) That all petitions and claims for expenses and allowances by said City National, Bondholders Committee and their attorneys and counsel be wholly disallowed and dismissed for want of equity;

(c) That the petition by City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(d) That for all other purposes petition by City National be dismissed for want of equity;

(e) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of the Court Trustee and that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bond-

holders Committee and their counsel of record, without 468 prejudice, however, to the right and power of the

Court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(f) That the Court deems it practicable and desirable and decree that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation, such application being made for the promotion of justice.

87. The Court erred in admitting the testimony of J. A. Lenz and in overruling the objection of Appellants to the admission thereof and their motion to strike same.

88. The Court erred in sustaining objections of Appellee to testimony of A. J. Schanfarber relating to the worth of carpets, ozite, in-a-door beds, china and kitchen cases in the year 1933 installed in Granada Apartments and in refusing to admit the testimony so objected to.

89. The Court erred in entertaining and in allowing the answer, objections and counterclaim of Court Trustee since the Court Trustee had no better or further claim than the Debtor and the Debtor's claim, if any, was barred by the said orders of the State Court and by estoppel, acquiescence, approval and ratification, and Court Trustee had no right to represent creditors, if any, without evidence to sustain finding of fraudulent conveyance with intent to hinder, delay and defraud creditors.

90. The Court erred in sustaining the objection of Appellee to the admission in evidence of City National's Exhibit A-3 and in refusing to admit as evidence said Exhibit.

469 91. The Court erred in failing to make the findings of fact and conclusions of law as submitted by Appellants to the Court on December 22, 1937 formally filed in these proceedings on September 30, 1938, said findings of fact and conclusions of law being entitled "Suggestions and Objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, *et al.*, and Defrees, Buckingham, Jones & Hoffman to the Decree, Findings of Fact and Conclusions of Law Drafted by the Court Trustee and Presented to the Court September 24, 1936."

Vincent O'Brien,

John Merrill Baker,

Tracy Wilson Buckingham,

Attorneys for City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffmann.

Appellants.

Vincent O'Brien,

John Merrill Baker,

Tracy Wilson Buckingham,

105 South La Salle Street,

Chicago, Illinois,

Attorneys for Appellants.

512 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

I, Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Do Hereby Certify that copy of Notice of Appeal was mailed on the first day of June, A. D. 1939 to the Attorneys whose names and addresses appear on the attached list, in the case stated thereon, as follows:

513 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—65811) * *

514 LIST OF PARTIES AND COUNSEL.

1. Granada Apartments, Inc., Counsel: Mort D. and Frank Goldberg, 11 South La Salle Street.

2. Granada Apartments Hotel Corporation, Weightstill Woods, Treasurer, 77 West Washington Street.

3. Florence Newman, Counsel: David H. Greenberg, 134 North La Salle Street.

4. Edwin Rosenberg and Charles Cunningham, Receiver, Counsel: Samuel Micon, 134 North La Salle Street.

5. Maurice M. Kraft, Counsel: David H. Kraft, 160 North La Salle Street.

6. Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Counsel: Loucks & Hennings, 10 South La Salle Street.

7. Edla and Emil W. Christiansen, Counsel: Cassels, Potter & Bently, 209 South La Salle Street.

8. G. R. Curnock, Counsel: R. W. Proctor, 10 South La Salle Street.

9. Reconstruction Finance Corporation, Counsel: Lee Walker, 164 West Jackson Boulevard.

515 10. Indemnity Insurance Company of North America, a corporation, Counsel: Dent, Weichelt & Hampton, 209 South La Salle Street.

11. E. W. Wenstrand, Counsel: Leo L. Donahoe, 155 North Clark Street.

12. Continental Illinois National Bank and Trust Com-

pany of Chicago, Counsel: Mayer, Meyer, Austrian & Platt, 231 South La Salle Street.

13. Charles H. Albers, Receiver, Counsel: William J. Flaherty, 1 North La Salle Street.

14. Harris Trust and Savings Bank, Counsel: Chapman and Cutler, 111 West Monroe Street.

15. I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, Petitioning Creditors, Counsel: David H. Greenberg, 134 North La Salle Street.

16. Weightstill Woods, Court Trustee, Counsel: Weightstill Woods, 77 West Washington Street.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court this 16th day of August, A. D. 1939.

(Seal)

Hoyt King,
Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) *

Entered
June 30,
1939.

Be It Remembered, that the following Order was entered in the above-entitled cause, in the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Twentieth day of June, A. D. 1939.

3 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—65811) *

Tuesday, June 20, A. D. 1939.

Present: Honorable John P. Barnes, District Judge.

It Is Ordered by the Court that this cause be and the same is hereby continued to November, 16, A. D. 1939 for Final Decree.

Certificate of Clerk.

516 Northern District of Illinois, } ss:
Eastern Division,

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designations filed in this Court in the cause entitled In the Matter of Granada Apartments, Inc., a corporation, Debtor No. 65811 as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 17th day of August, A. D. 1939.

(Seal)

Hoyt King,
Clerk.

And on, to wit: On the twelfth day of June, 1939, there was filed in the Office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the following Assignment of Errors, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Filed
June 12,
1939.

For the Seventh Circuit.

No. 6986.

In the Matter of

Granada Apartments, Inc., a
corporation,

Debtor.

City National Bank and Trust Com-
pany of Chicago, individually and
as Successor Trustee, etc., et al.,
Appellants,

vs.

Weightstill Woods, Court Trustee,
et al.,

Appellees.

Petition for appeal from
order entered in Case
No. 65811 in the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division, denying
fees and expenses to
Bondholders Protective
Committee, Trustee un-
der First Mortgage In-
denture and to Defrees,
Buckingham, Jones &
Hoffman, as their Attor-
neys, and sustaining and
allowing counterclaim by
Weightstill Woods, as
Court Trustee.

Honorable
John F. Barnes,
Judge Presiding.

ASSIGNMENT OF ERRORS.

Now come the Petitioners, City National Bank and Trust Company of Chicago, as Successor Trustee under trust indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under Deposit Agreement for the Holders of said Bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, and file the following assignment of errors to the entry of the order of May 2, 1939 from which leave to appeal is prayed:

1. The Court erred in making its finding of fact numbered 2 to the extent that it finds as a matter of law that the Federal Trustee is acting "under Chapters II and X of amended law."

2. There is no evidence of record to sustain that part of finding of fact numbered 4 which reads "to defend and is now carrying on this litigation, by order of the Court," and it is contrary to the evidence of record.

3. The Court erred in making its finding of fact numbered 10 to the extent that it finds Chapters II and X of the bankruptcy amendments applicable to this litigation.

4. The Court erred in making its fact finding numbered 12 to the extent that it finds that Mateer owned the corporate stock.

5. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"There was a failure by Chicago Trust Company and its counsel to see to it that the furniture and fixtures in the Granada Hotel were paid for out of the proceeds of that loan."

6. There is no evidence of record to sustain that part of finding of fact numbered 14 which reads:

"They charge Granada Hotel Corporation more than One Hundred Twenty Thousand Dollars (\$120,000)."

7. There is no evidence of record to sustain finding of fact numbered 15.

8. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"The increase over 1924 was about Three Hundred Thousand Dollars (\$300,000)."

9. There is no evidence of record to sustain that part of finding of fact numbered 16 which reads:

"Again there was a failure to pay off the claim of Albert Pick & Company, out of the proceeds of the new financing."

10. That part of finding of fact numbered 17 which reads:

"In the Wenstrand suit in this Court bonds were given of \$5,000, \$20,000 and finally \$40,000 to stay the sale." is contrary to the evidence.

11. There is no evidence of record to sustain that part of the finding of fact numbered 19 which reads:

"To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930 a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue." and it is contrary to the evidence of record.

12. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"as part of this action by direction of those who initiated the bond issue and sold the bonds, a conditional sales contract was issued to La Salle Furniture and Supply Company for Thirty-five Thousand Dollars (\$35,000)."

13. There is no evidence of record to sustain that part of finding of fact numbered 20 which reads:

"It was a corporation organized by Cody Trust Officers and their counsel for this ~~one~~ transaction. The Bankers thus made their own collateral."

14. There is no evidence of record to sustain the first sentence of finding of fact numbered 22.

15. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Mr. Mateer definitely passed out of the enterprise. This corporation never had an independent will of its own. An Agreement was made between Chicago Trust Company and Cody Trust Company, whereby the latter (as between them) had the duty to see that the Pick claim was disposed of out of the proceeds of refinancing of 1928."

16. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"an agreement was negotiated by Edward Hall, another employee and nominee of the Cody Trust Company and City National, who was then in charge at Granada, co-operating with their attorneys."

17. There is no evidence of record to sustain that part of finding of fact numbered 23 which reads:

"Thereby the right established in Superior Court to remove said fixtures from the hotel was sold to the Central Republic Trust Company, as successor Trustee under the 1928 refinancing trust deed."

18. That part of fact finding numbered 23 reading "To carry out this agreement" is contrary to the evidence.

19. The Court erred in making that part of finding of fact numbered 24 which reads:

"A stipulation was signed by attorneys and some parties in the Superior Court case, and upon that an order was entered directing the Chicago Title and Trust Company to issue a Receiver's Certificate to obtain money." and in not finding that the order was entered not only upon the stipulation but upon a petition duly filed.

20. The Court erred in finding of fact numbered 24 which reads:

"Services of said attorneys were performed to protect persons other than the bondholders." and in not finding that the services were rendered in fixture litigation in the Superior Court, the Appellate Court and the Supreme Court of Illinois for the purpose of keeping in the building the alleged fixture items.

21. The Court erred in that part of finding of fact numbered 24 which reads:

"All said sums were paid primarily for benefit of persons other than Granada debtor and other than Bondholders."

and in not finding that both Pick and the holder of the Receiver's Certificate of Indebtedness had a prior lien on the property.

22. The Court erred in that part of finding of fact numbered 25 which reads:

"The Superior Court Judge was not told that Wenstrand and others had signed the 1928 refinancing first mortgage bonds as makers thereof;"

and in not finding that proceedings for foreclosure were pending in that Court and that those facts were of record.

23. The Court erred in that part of finding of fact numbered 25 which reads:

"The opinion and findings of this Court in that matter as filed July 13, 1938 is incorporated as part hereof."

in that such finding is wholly immaterial; dealing with a separate matter and in no way binding upon the parties to this litigation.

24. That part of finding of fact numbered 26 reading as follows:

"Respondents and I. I. C. N. A. with knowledge, participated in a conspiracy the effect of which was to use the bondholders money a second time to purchase furniture and personal property for the Granada Hotel. The details of this conspiracy appear from beginning to end of the record."

is a legal conclusion not supported by any evidence in the record.

25. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"these facts were well known to the Central Republic Trust Company and City National Bank and Trust Company and were available to or known by Chicago Title & Trust Company."

26. There is no evidence of record to sustain that part of finding of fact numbered 26 which reads:

"By their efforts the bondholders money paid a second time for furniture at Granada."

27. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"The money misappropriated to buy furniture a second

time and to pay to I. I. C. N. A. and sundry litigation in many courts stopped completely all payment to bondholders. Creditors were hindered, delayed and defrauded."

28. There is no evidence of record to sustain that part of finding of fact numbered 28 which reads:

"Chicago Title and Trust Company as nominal receiver was a party to some of this diversion of trust funds, from creditors who were not informed. Respondents and the other signers, by stipulations, assisted in this breach of trust, knowing that there would not remain money to pay the bondholders."

29. There is no evidence of record to sustain that part of finding of fact numbered 29 which reads:

"Plainly the cross bill was filed for that purpose."

30. The Court erred in making finding of fact numbered 30 as said finding of fact is a conclusion of law.

31. There is no evidence of record to sustain that part of finding of fact numbered 30 which reads:

"All parties knew it was defunct more than two (2) years when for the first time in August, 1933 proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross bill."

32. The Court erred in that part of finding of fact numbered 30 which reads:

"All proceedings and the decree in Superior Court claim only a debt due from said defunct corporation and no one else."

and in not finding that foreclosure proceedings are proceedings in rem that are brought to enforce a lien and are not barred because the maker corporation is defunct.

33. The Court erred in that part of finding of fact numbered 30 which reads:

"By the decree December 18, 1936 the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

and in not finding that the decree in evidence shows that the Court did not undertake to pass on the plaintiff's account but does state the account as between the parties to the litigation and finds what remains due the plaintiff Trustee after allowing all credit on account of rents collected.

34. There is no evidence of record to sustain that part of fact finding numbered 31 which reads:

"Respondents and I. I. C. N. A. stress the contention that attorney Shanner did not participate in the proceeding in the Superior Court."

35. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"Nominees of Cody Trust Company physically and actually operated the property until January 1934."

36. There is no evidence of record to sustain that part of finding of fact numbered 32 which reads:

"At that time school tax warrants owned by Granada needlessly were sold at a discount."

37. That part of finding of fact numbered 33 which reads:

"From October, 1932 the City National assumed and exercised real control over Granada affairs." is contrary to the evidence.

38. That part of finding of fact numbered 33 which reads:

"Under the Illinois law at that time, no such question of title could be brought before the Court in a foreclosure proceeding. These acts were void." is not a finding of fact but a conclusion of law and is erroneous.

39. That part of finding of fact numbered 34 which reads:

"This Bondholders Committee had no will of its own." is contrary to the evidence of record.

40. There is no evidence of record to sustain that part of finding of fact numbered 34 which reads:

"From that time until the Court Trustee in these proceedings took possession under the order of May 17, 1937, City National Bank and Trust Company, claiming to be trustee in possession, operated the Granada Hotel property."

and it is contrary to the evidence.

41. That portion of finding of fact numbered 34 which reads as follows:

"City National installed intricate bookkeeping under which Granada moneys were shifted from one fund to another. City National and its alter ego, Granada Bondholders Committee entered into possession and engaged in various dilatory litigation, in Superior Court, County Court, this Court and Courts of Review." is contrary to the evidence of record.

42. There is no evidence of record to sustain that part of finding of fact numbered 35 which reads:

"From 1929 when the new corporation was formed, until May 17, 1937 the actual operation and control of the Granada Hotel property was carried on by some representative

of the Cody Trust Company or the Chicago Trust Company or the Central Republic Trust Company or the City National Bank and Trust Company."

43. That part of finding of fact numbered 35 which reads:

"Since 1931 Edward Hall was this representative and was on the payroll when this Court took possession of the property in May, 1937."

is contrary to the evidence of record.

44. There is no evidence of record to sustain that part of finding of fact numbered 33 which reads:

"By various Chicago Banks who held them as collateral for loans to Chicago Trust Company."

45. There is no evidence of record to sustain that part of finding of fact numbered 36 which reads as follows:

"All these facts were known or available to City National."

46. The Court erred in making the entire finding of fact numbered 37 as such finding of fact is not a finding of ultimate fact and mere argument.

47. There is no evidence to sustain the second, third, fourth, fifth and sixth sentences of finding of fact numbered 38.

48. There is no evidence of record to sustain that part of finding of fact numbered 40 which reads:

"The Committee has been at all times dominated and controlled by City National. It existed solely as a service unit in City National trust department."

49. There is no evidence of record to support the first four sentences of finding of fact numbered 41 and such findings of fact are contrary to the evidence of record.

50. That part of finding of fact numbered 41 which reads:

"Although committees for Lincoln Park Manor, Arlington and Granada were dominated by the Trust department of City National . . . no serious effort has ever been made to reorganize said properties as a business unit. Rather the effort has been to prevent a unit reorganization of the three properties. Divide the bondholders, increase the expenditures, increase the difficulties of reorganizations, has been the method pursued with reference to these three properties, which from the engineering standpoint and their manner of construction were intended to be operated as a single unit."

is contrary to the evidence of record.

51. The Court erred in making that part of the finding of fact numbered 42 which reads:

"If the properties were not to be operated as a single unit but as antagonistic units, it was highly improper for the committee or City National or counsel to continue to represent more than one of them. A continuance of said representation at all times was a breach of trust which alone disentitles counsel or committee or City National to any compensation for services to Granada." as said statements are conclusions of law and not statements of ultimate facts and are erroneous.

52. That part of finding of fact numbered 42 which reads:

"Instead of reorganizing three properties as a unit . . . City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars (\$4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933." is contrary to the evidence of record.

53. That part of finding of fact numbered 42 which reads:

"The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract." is contrary to the evidence of record.

54. That part of finding of fact numbered 43 which reads:

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars (\$60,000) when these proceedings were begun." is contrary to the evidence of record.

55. With respect to that part of the finding of fact numbered 43 which reads:

"At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel."

the Court erred in making such a finding of fact without further finding that Lincoln Park Manor is being operated by a State Court receiver and that the rate of compensation paid has been fixed by order of the State Court.

56. There is no evidence of record to sustain that part of finding of fact numbered 43 which reads:

"This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."

and it is contrary to the evidence of record.

57. That part of finding of fact numbered 43 which reads:

"That contract remains in force at this time." is contrary to the evidence of record.

58. The Court erred in making that part of finding of fact numbered 43 which reads:

"After trial of this suit, Arlington, Inc. has refused to receive services under said contract since December 10, 1937;"

59. The Court erred in that part of finding of fact numbered 43 which reads:

"who have done this additional wrong to Granada." as such is not a finding of fact but a conclusion of law.

60. There is no evidence to sustain that part of finding of fact numbered 43 which reads:

"Arlington, Inc. is officered and controlled by City National employees."

61. The Court erred in making that part of finding of fact numbered 44 which reads:

"Since the Granada property was built in 1924, one set of attorneys . . . have represented . . . Cody Trust Company . . . Wenstrand and Hall as agents and nominees for said companies,"

without further finding that counsel for City National never represented Cody Trust Company, Wenstrand or Hall in any matter affecting the Granada property.

62. There is no evidence of record to support that part of finding of fact numbered 44 which reads:

"Throughout ten years of litigation a connected purpose is shown to prevent a clearance of this property from Court entanglements. As each suit came to adverse determination, a new one was begun in the name of some new Trust Company or some new nominee, whose name was used in some new suit or some new Court to delay, embarrass and harass creditors of the estate. Every effort has been made to pay with moneys from the Debtor estate, court expenses and legal expenses for maintaining and con-

tinuing these various litigations, and to protect the bankers and attorneys from their own wrongs and mistakes." and same is contrary to the evidence.

63. The Court erred in making finding of fact numbered 45 in that most of such finding of fact is a legal conclusion and the remaining portions thereof are either not supported by any evidence of record or are directly contrary to the evidence of record.

64. That part of finding of fact numbered 46 contained in the first sentence thereof which reads: "(self appointed by its own committee)" is contrary to the evidence of record.

65. There is no evidence to support that part of finding of fact numbered 46 which reads: "it dealt with Debtor property as though it were the general owner of all Granada affairs."

66. That part of finding of fact numbered 46 which reads:

"In practice City National made itself general trustee far beyond any supposed authority under the order of Superior Court." is contrary to the evidence of record.

67. There is no evidence of record to sustain that part of finding of fact numbered 46 which reads:

"When City National, or the Committee, or the counsel, decided to take an action they did so as would an owner of the property, or they got stipulations and a Court order;"

68. That part of finding of fact numbered 46 which reads:

"But if the matter were something that City National did not want to do they took the stand that they were trustee in possession and free from Court control." is contrary to the record.

69. The Court erred in making that part of finding of fact numbered 47 which reads:

"The cleverness with which this long train of affairs has been carried on for ten years, now in Court and now out of Court, to the utter defeat of all opposition by creditors or bondholders, shows how helpless the investor became; and the need for relief. For the purpose of carrying on litigation, when City National or the Committee or counsel decided to do so, they had abundance of money and unlimited power to act; but if it be something they do not wish to do, they take the opposite position that they are limited; could not replace the incinerator; could not

make slight changes in the rentable space on the first floor of the hotel; and could not do many other things which are mentioned in the record. There is no consistency at all in the shifting positions taken by the City National, the Bondholders Committee and their counsel in this record. They step into power and out of power, as for the moment suits their pleasure; they claim or disclaim as they think it expedient at the time."

as such finding of fact contains either legal conclusions or such facts as are stated are not sustained by the evidence of record or are contrary to the evidence of record.

70. The Court erred in making that part of finding of fact numbered 48 which reads:

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel."

as said exhibit was not an estimate but the agreement.

71. There is no evidence of record to support that part of finding of fact numbered 48 which reads:

"The evidence shows these attorneys at one time or another represented all persons and trust companies having to do with Granada finances, except perhaps Mr. Mateer."

72. That part of finding of fact numbered 48 which reads:

"which was allowed to lag along until Cody Trust Company became insolvent and the Granada Committee was launched by the City National."

is contrary to the evidence of record.

73. The Court erred in making that part of finding of fact numbered 49 which reads:

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."

as such finding is not a finding of fact but a conclusion of law and is erroneous.

74. There is no evidence of record to support that part of finding of fact numbered 49 which reads:

"It is plain this adverse interest existed from the time Mr. Mateer ceased to own the stock of these three properties, and ceased to manage them as a unit enter-

prise. Control was taken from him in May, 1929, when Granada Apartments Inc. was organized.

75. Court erred in making finding of fact numbered 50 as the large part of such finding of fact is not a finding of fact but a legal conclusion and such portions as do state facts are either contrary to the evidence of record or there is no evidence to sustain such findings.

76. The Court erred in making that part of finding of fact numbered 51 which reads:

"By the foregoing and other acts of force, fraud and secrecy shown by evidence in this record, control was obtained and determinedly held over Debtor property for the purpose and with the effect to hinder, defraud and delay creditors of the Debtor. Respondents brought about that result."

as such is not a finding of fact but is an erroneous legal conclusion not justified by the evidence.

77. The Court erred in making finding of fact numbered 52 which reads:

"For any matter or action wherein City National, its Committee or Counsel claim they were hindered by need for consent of Debtor Corporations or other persons, they are at fault by failure to make full disclosure, to demand consent, and obtain consent or refusal, and likewise by failure in this record to prove the same."

as such is not a finding of fact but a conclusion of law and an erroneous one not justified by the evidence.

78. Finding of fact numbered 53 which reads:

"The reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington Hotel property by Granada until there was wilful cut off of pipes by respondents and refusal further to receive the services after December 10, 1937, is found to be at the rate of One Thousand Dollars (\$1,000) per month."

is contrary not only to the oral opinion rendered by the Court but to the evidence and there is no evidence of record to sustain the finding.

79. The Court erred in making finding of fact numbered 54 which reads:

"Without need for repetition here in detail, the truth of all matters stated in answer and counterclaim by Court Trustee filed September 9, 1937, is fully established by evidence in the record. The Court Trustee has fully proven the substance of all matters claimed in his pleadings and herein enumerated, and Debtor estate is entitled

to full relief for the wrongs asserted and proven of record. All the items claimed as credits by City National should be falsified, disallowed and ordered paid to Court Trustee with reasonable interest."

as it is either a conclusion of law or a finding of fact not sustained either by evidence of record or is contrary to the evidence of record.

80. The Court erred in making finding of fact numbered 55 and each and every part thereof since it is not supported by any evidence of record and is in every respect contrary to the evidence of record.

81. The court erred in making finding of fact numbered 56 as such finding and every part thereof is contrary to the evidence; and the amounts there specified are, and each of them is, unreasonably, arbitrarily and unconscionably low.

82. The Court erred in making finding of fact numbered 57 in so far as it provides that City National, the Committee and their counsel are to pay their own costs and charges and are to be allowed no recovery therefor against the estate.

83. The Court erred in making finding of fact numbered 58 which is, in effect, an erroneous conclusion of law.

84. The Court erred in making conclusions of law as stated in paragraphs 59 to 72, both inclusive.

85. The Court erred in disregarding the binding effect of and in erroneously reviewing the following orders and decrees entered in the State Court: (a) order directing issuance of Receiver's Certificate; (b) order directing Chicago Title and Trust Company to make payment on account thereof; (c) order directing Central Republic Trust Company, as indenture Trustee, to assume and to pay balance; (d) order appointing City National Bank and Trust Company Successor Trustee; (e) order approving account filed by O'Connell, Receiver, on behalf of Central Republic Trust Company, as indenture Trustee; (f) order fixing and allowing Master's fees and taxing them as costs; and (g) decree of sale finding and decreeing: (1) City National Bank and Trust Company the duly authorized, qualified and acting Successor Trustee; (2) amounts due it on accounting taken for its own use and benefit (including the fees of the Trustee and its counsel) and for the use and benefit of Bondholders and decreeing a lien on the property to secure payment of

the same; (3) the amount due on and the lien of the Receiver's Certificate of Indebtedness; and (4) an accounting between the parties including the trustee-in-possession account down to September 30, 1936.

86. The court erred in entering and making the following portions of the decree entered May 2, 1939:

(a) That said paragraphs 5 and thereafter of Claim No. 9 by said City National against the Debtor be wholly disallowed and dismissed for want of equity;

(b) That all petitions and claims for expenses and allowances by said City National, Bondholders Committee and their attorneys and counsel be wholly disallowed and dismissed for want of equity;

(c) That the petition by City National filed August 30, 1937 be allowed only so far that said City National be now discharged from making any further accounting as to the matters mentioned in this proceeding;

(d) That for all other purposes petition by City National be dismissed for want of equity;

(e) That said answer and counterclaim by Weightstill Woods, Court Trustee, filed September 9, 1937 be sustained and allowed in favor of the Court Trustee and that said recovery be effective as a recoupment to extinguish any and all claims at this date by said City National, Bondholders Committee and their counsel of record, without prejudice, however, to the right and power of the Court to make disposition of the petition of the Committee relating to title charges now pending before Referee Chindblom.

(f) That the Court deems it practicable and desirable and decrees that application of Chapter II and Chapter X of the Bankruptcy Law, as amended by Act of Congress approved by the President June 22, 1938, shall be made to this litigation, such application being made for the promotion of justice.

87. The Court erred in admitting the testimony of J. A. Lenz and in overruling the objection of Appellants to the admission thereof and their motion to strike same.

88. The Court erred in sustaining objections of Appellee to testimony of A. J. Schanfarber relating to the worth of carpets, ozite, in-a-door beds, china and kitchen cases in the year 1933 installed in Granada Apartments and in refusing to admit the testimony so objected to.

89. The Court erred in entertaining and in allowing the answer, objections and counterclaim of Court Trustee

since the Court Trustee had no better or further claim than the Debtor and the Debtor's claim, if any, was barred by the said orders of the State Court and by estoppel, acquiescence, approval and ratification, and Court Trustee had no right to represent creditors, if any, without evidence to sustain finding of fraudulent conveyance with intent to hinder, delay and defraud creditors.

90. The Court erred in sustaining the objection of Appellee to the admission in evidence of City National's Exhibit A-3 and in refusing to admit as evidence said Exhibit.

91. The Court erred in failing to make the findings of fact and conclusions of law as submitted by Appellants to the Court on December 22, 1937 and formally filed in these proceedings on September 30, 1938, said findings of fact and conclusions of law being entitled "Suggestions and Objections of City National Bank and Trust Company of Chicago, Charles S. Tuttle, *et al.*, and Defrees, Buckingham, Jones & Hoffman to the Decree, Findings of Fact and Conclusions of Law Drafted by the Court Trustee and Presented to the Court September 24, 1936."

City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing Granada Apartments First Mortgage Bonds; Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds; and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman,
Petitioners,

By Vincent O'Brien,
John Merrill Baker,
Tracy Wilson Buckingham,
Their Attorneys.

Entered
June 22,
1939.

And afterwards on, to wit, the 22nd day of June, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

June 22, 1939.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 6986)

It is ordered by the Court that the petition of City National Bank and Trust Company of Chicago, etc., *et al.*, for leave to appeal from the order or decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on May 2, 1939, in the matter of Granada Apartments, Inc., Debtor, be, and it is hereby, granted, and an appeal from said order or decree is hereby allowed.

It is further ordered that appellants file an appeal bond in the sum of two hundred and fifty dollars within ten days from this date.

Entered
Oct. 4,
1939.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

Wednesday, October 4, 1939.

Court met pursuant to adjournment.

Before: Hon. Wm. M. Sparks, Hon. J. Earl Major and Otto Kerner, Circuit Judges.

• • (Caption—6986 and 7060) • •

ORDER.

This cause coming on to be heard upon motion of City National Bank and Trust Company of Chicago, individually and as Successor Trustee under indenture securing

Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee, acting under the Deposit Agreement dated April 25, 1933, with respect to said bonds, and George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Buckingham, Jones & Hoffman, Appellants herein, and the Court being fully advised in the premises, It Is Ordered:

(a) That the appeal of Appellants allowed by this Court and now pending in this Court as cause number 6986, and the appeal of Appellants taken to this Court pursuant to notice of appeal heretofore filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, and now pending in this Court as the above entitled cause number 7060, be consolidated as cause number 6986;

(b) That the transcript of record now filed with the Clerk of this Court in cause number 6986 and the transcript of record now filed with the Clerk of this Court in the above entitled cause number 7060, be consolidated and stand as the single consolidated transcript of record in both of said appeals as so consolidated;

(c) That the Clerk of this Court be and he is directed to cause to be printed only such portions of the single consolidated transcript of record as are designated in "Exhibit A" attached to the said above mentioned motion and made a part thereof, including the printing of a condensed and narrative statement of the transcript of proceedings now filed with the Clerk of this Court in the above entitled cause number 7060 and of a summary statement of certain exhibits attached to said condensed and narrative statement, in lieu of the printing of said transcript of proceedings and said exhibits in full, and that the said single consolidated transcript of record as so now filed and the said single printed transcript of record shall stand as the transcript of record in both of said appeals as so consolidated, with leave to any party where necessary or desirable to refer by citation to the transcript by page as well as to the printed transcript; and

(d) That Appellants be permitted to file one brief and one reply brief with respect to both appeals as so consolidated, and that each of the Appellees be permitted to file one brief with respect to both appeals as so consoli-

dated, the said respective briefs and reply to stand as the briefs and reply briefs in both of said appeals as so consolidated.

Endorsed: In the United States Circuit Court of Appeals. * * (Caption—7060) * * Order.

UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—6986) * *

United States } ss.
of America }

The President of the United States, To Weightstill Woods, Court Trustee, Granada Apartments, Inc., a corporation, Granada Apartments Hotel Corporation, a corporation, Florence Newman, Edwin Rosenberg, Charles Cunningham, as Receiver, Maurice M. Kraft, Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased, Edla Christiansen, Emil W. Christiansen, G. R. Curnock, Reconstruction Finance Corporation, a corporation, Indemnity Insurance Company of North America, a corporation, E. W. Wenstrand, Continental Illinois National Bank and Trust Company of Chicago, a corporation, Charles H. Albers, as Receiver, Harris Trust and Savings Bank, a corporation, I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg, Greetings:

You Are Hereby Cited and Admonished to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, Illinois, within thirty (30) days from June 22, 1939, pursuant to an order allowing an appeal filed in the Clerk's Office of the United States Circuit Court of Appeals for the Seventh Circuit, wherein City National Bank and Trust Company of Chicago, individually and as Successor Trustee under Indenture securing Granada Apartments First Mortgage Bonds, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933, with respect to said Bonds, George T. Buckingham, Donald Defrees, Don Kenneth Jones, Matthew Mills, Stephen E. Hurley, Kenneth M. Fiske, Vincent O'Brien and Metellus Thomson, co-partners doing business as Defrees, Bucking-

ham, Jones & Hoffman, are Appellants and you are Appellees, to show cause, if any there be, why the order entered May 2, 1939, rendered against the Appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. Earl Major, Judge of the United States Circuit Court of Appeals, this 30th day of June, in the year of our Lord One Thousand Nine Hundred and Thirty-nine.

J. Earl Major,
*Judge of the United States
Circuit Court of Appeals.*

Service of a copy of the foregoing citation is acknowledged this 6th day of July, 1939.

Weightstill Woods,
Weightstill Woods,
Attorney Pro Se.

Mort D. and Frank Goldberg,
Mort D. and Frank Goldberg,
Attorneys for Granada Apartments, Inc.

David H. Greenberg,
David H. Greenberg,
Attorney for Florence Newman.

Samuel Micon,
Samuel Micon,
*Attorney for Edwin Rosenberg
and Charles Cunningham, Receiver.*

David H. Kraft,
David H. Kraft,
Attorney for Maurice M. Kraft.

Loucks & Hennings, (M. Foss)
Loucks & Hennings,
Attorneys for Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of the Estate of Stephen A. Ingersoll, Deceased.

Cassels, Potter & Bentley,
Cassels, Potter & Bentley,
Attorneys for Edla and Emil W. Christiansen.

Citation.

R. W. Proctor (M. Foss),
 R. W. Proctor,
Attorney for G. R. Curnock.

Lee Walker by H. S. W.,
 Lee Walker,
Attorney for Reconstruction Finance Corporation.

Dent, Weichelt & Hampton,
 Dent, Weichelt & Hampton,
Attorneys for Indemnity Insurance Company of North America.

Leo L. Donahoe (E. Stahl),
 Leo L. Donahoe,
Attorney for E. W. Wenstrand.

Mayer, Meyer, Austrian & Platt,
 Mayer, Meyer, Austrian & Platt,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago.

William J. Flaherty,
 William J. Flaherty,
Attorney for Charles H. Albers, Receiver.

Chapman and Cutler,
 Chapman and Cutler,
Attorneys for Harris Trust and Savings Bank.

David H. Greenberg,
 David H. Greenberg,
Attorney for I. Gordon, J. Rose, Sam Harris and M. Bernard Greenberg.

Weightstill Woods,
Treasurer of Granada Apartments Hotel Corporation.

State of Illinois }
County of Cook } ss.

Paul Murray, being first duly sworn, on oath deposes and says that on the 5th day of July, 1939, at the hour of 3:45 P. M., he served the above and foregoing citation upon the within named Granada Apartments Hotel Corporation by delivering and leaving a true and correct copy of said citation with Weightstill Woods, Treasurer of said Granada Apartments Hotel Corporation, at the office of said Weightstill Woods and of said Granada Apartments Hotel Corporation, at 77 West Washington Street, Chicago, Illinois.

Paul Murray.

Subscribed and sworn to before me this 7th day of July,
A. D. 1939.

Ruth Burns,
Notary Public.

(Seal)

Endorsed: United States Circuit Court of Appeals.
* * (Caption—6986) * * Citation. U. S. C. C. A.—7.
Filed Jul 11 1939 Frederick G. Campbell Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 421 to 837, inclusive, contain a true copy of volume II of the printed record printed under my supervision and filed on the fifteenth day of November, 1939, in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago,
etc., *et al.*,

Appellants,

vs.

Weightstill Woods, Court Trustee, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

(Seal)